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IN THE

Supreme Court of the United States

..... TERM

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMAN'S ASSOCIATION INDEPENDENT, ET AL,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST JUDICIAL DISTRICT, HOUSTON, TEXAS

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No. .....

In The

Supreme Court of the United States

..... Term

South Atlantic & Gulf Coast District of the International Longshoreman's Association Independent, et al.,

Petitioners,

v.

Harris County-Houston Ship Channel Navigation District,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST JUDICIAL DISTRICT, HOUSTON, TEXAS

PETITIONERS, SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, INDEPENDENT, RALPH A. MASSEY and PAUL E. KOEHNE, as representatives of the District, INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, LOCAL 1273, WILLIE C. WELLS, and JIM CLARK as representatives of LOCAL 1273, INTERNATIONAL LONGSHOREMAN'S ASSOCIATION LOCAL 1530, and LLOYD ALLEN as representatives of LOCAL 1530, INTERNATIONAL LONGSHOREMAN'S ASSOCIATION LOCAL 872, and its President, RAYMOND DUNCAN, individually and as representative of I.L.A. Local 872, respectfully pray that a Writ of Certiorari issue out of, and under the seal of this Court, to review the decision and judgment of the Court of Civil Appeals for the First Judicial District of Houston, Texas.

I.

OPINIONS BELOW

The order of the Eleventh Judicial District Court of Harris County, Texas, granting the temporary injunction is unreported (App. 1a); the order of the same Court granting the permanent injunction is unreported (App. 20a). The opinion of the Court of Civil Appeals for the First Supreme Judicial District, Houston, Texas, affirming the grant of the temporary injunction was rendered on September 20, 1962, and is reported at 358 S.W. 2d 658 (App. 10a). The order of the Court of Civil Appeals for the First Supreme Judicial District, Houston, Texas, refusing Petitioners' Motion for Rehearing on its opinion on temporary injunction was rendered on the 21st day of June, 1962 (App. 18a). The opinion of the Court of Civil Appeals for the First Judicial District of Houston, Texas, affirming the grant of the permanent injunction was rendered on September 20, 1962, and is reported in 360 S.W. 2d page 181 (App. 29a). The order of the Court of Civil Appeals for the First Judicial District of Houston, Texas, refusing Petitioners' Motion for Rehearing on its opinion on permanent injunction was rendered on the 27th day of September, 1962. (App. 31a).

The order of the Supreme Court of Texas refusing Petitioners' Application for Writ of Error on the opinion of the Court of Civil Appeals of May 31, 1962 (Temporary Injunction) and of September 20, 1962 (Permanent Injunction) was rendered on December 5, 1962 (App. 33a).

II.

JURISDICTION

Jurisdiction is conferred by 28 U.S.C.A. 1257. The Supreme Court of Texas is the highest Court of Texas in which a decision herein could be had. Its order denying Petitioners' Application for Writ of Error (on permanent and temporary injunction) was entered on the 5th day of December, 1962. Therefore, the Order of The Supreme Court of Texas, denying Petitioners' Application for Writ of Error from the

opinion of the Court of Civil Appeals for the First Judicial District, Houston, Texas, is a final judgment within the purview of section 1257.

III.

QUESTIONS PRESENTED

(1) Is a State statute constitutional which prohibits, either by express language or interpretation, the advertising of a bona fide labor dispute with an arm of the State government engaged in private enterprise, where the picketing is not attended by violence and is in accordance with the regulatory provisions regarding picketing of the State.

(2) May a State Court enjoin peaceful picketing which is arguably within the protection or prohibition of the Labor-Management Relations Act.

IV.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States. Labor-Management Relations Act of 1947, 61 Stat. 136, et seq, 29 U.S.C.A. 152(2) and 157 (App. 37a). Acts 1947, 50th Leg., Chapter 38, page 239; Vernon's Texas Civil Statutes, Article 5154(c) (App. 37a).

V.

STATEMENT OF THE CASE

The Harris County-Houston Ship Channel Navigation District is a body politic under the laws of the State of Texas (S.F. 3). For many years prior to 1961, this governmental body operated docking facilities and warehouses adjacent to the Houston Ship Channel in direct competition with other dock owners there situated (S.F. 128-129). Longshoremen employed through Locals 872 and 1273 performed the task of loading and unloading vessels carrying cargo of every kind, including bulk cargo. Maintenance and actual operation of equipment, such as cranes, conveyor belt, etc., were done by employees of the Navigation District, members of Locals 1530 (maintenance) and 1331 (carloaders). However, all other work was done by the deep sea locals, 1273 and 872.

During 1961, the Navigation District entered into the bulk material cargo business in a big way (S.F. 68-70, 129). On September 21, 1961, the Navigation District began operations at its four million dollar, bulk materials handling plant (S.F. 64). These facilities, though more modern in scope and simpler in principle were operated in substantially the same manner as the older docks.

The present litigation is grounded on the decision of the Navigation District to abandon the usage of longshoremen in its loading and unloading operations at the new facilities (S.F. 59, 129-130), that is, the Navigation District determined that it would use the direct, permanent employment method at the new docks and that all such employees would come from Local 1530 (S.F. 19). When the International Longshoremen's Association was informed of this decision, it immediately contacted the general manager of the Navigation District in an effort to obtain a change in policy. Several meetings were held, but all proved unsuccessful (S.F. 20-27). Then, on January 6, 1962, two longshoremen, one a member of Local 872 and one a member of Local 1273, picketed the new facility, carrying signs reading as follows: "Labor Dispute with ILA Local No. 1273 Longshoremen" and "Harris County-Houston Ship Channel Navigation District Gulf has a Stevedores Labor Dispute with ILA Local No. 872 Longshoremen." (Supp. Tr. #13985, p. 1).

It is stipulated that these signs did not misrepresent the facts, but indeed spoke the truth (S.F. 123-124). Likewise, it is conceded that the picketing was at all times peaceful, unobstructive and in compliance with the laws of Texas regulating picketing. Vernons' Texas Civil Statutes, Article 5154d (1) and (2). When the employees of the Navigation District (members of 1530) refused to breach the picket line, it instituted the present proceeding in the District Court of Harris County, Texas, 11th Judicial District, seeking injunctive relief under Vernon's Texas Civil Statutes, Article 5154c, which prohibits its employees to strike or seek recognition as the exclusive bargaining agency for execution of a contract re wages, hours and working conditions (App. 37a).

In substance, the Navigation District contended that Local 1530 was engaging in an unlawful strike and that Locals 872 and 1273 were en-

gaging in unlawful picketing. After a factual hearing, and on February 1, 1962, the trial court granted a temporary injunction prohibiting members of Local 1530 from engaging in any work stoppage and prohibiting Locals 872 and 1273 from picketing at premises of the Navigation District. On September 11, 1962, the injunction was made permanent. The Court of Civil Appeals for the First Supreme Judicial District affirmed. Writ of error was denied by the Supreme Court of Texas.

Petitioner has maintained throughout this litigation that the trial court erred in granting the injunction, first, because the injunction violated Petitioner's rights under the First and Fourteenth Amendments and (S.F. 186, 188-190) (App. 38a), second, because the trial court had usurped the authority of the National Labor Relations Board in interfering in this labor dispute (S.F. 185-186, App. 38a and Tr. #13985 p. 15).

VI.

REASONS FOR GRANTING THE WRIT

(1) In this day and age, where government is more and more entering the realm of private enterprise, it is becoming increasingly important for this Court to lay down guidelines by which government and government employees—engaged in commerce in competition with other private industries—can gauge their affairs in the area of labor relations. The shifting concept and role of government must ultimately lead to a replotting of the permissible conduct of the parties involved. On the one hand, government seeks to maintain its traditional insulation from labor problems. To this end, it claims the shield of governmental immunity. On the other hand, employees who once worked in private enterprise are dismayed by the loss of their traditional fight to strike and picket by the permeation of government into the industry. These employees, now nourished in free enterprise, resist being put to forced labor under an implied yellow-dog contract. The end result of such a clash of ideals can only be unrest and dissatisfaction. The end result can only be conflict, with government restoring to the rusty cure-all, the labor injunction. This is such a case.

The role of this Court is a narrow one. Simply stated, this Court must judge when a government which engages in private enterprise, be it state or federal, has violated constitutional rights in its efforts to quell its labor problems. The primary right involved is, of course, freedom of speech. Although a myriad of problems can be envisioned under this general heading, the instant case presents no broader inquiry than whether laborers who have been put out of jobs by state government (in private enterprise) can voice their protest by peaceful and truthful picketing. Stated in context, the question is whether the longshoremen of Locals 872 and 1273 had a constitutional right to picket in protest of the Navigation District's decision not to use the men from these two locals at its bulk materials-handling plant. Petitioner's respectfully contend that they had such a right.

Recently this Court was again called on to measure the right of free speech guaranteed under the First and Fourteenth Amendments. And again this Court reaffirmed the salutary principle "that only a compelling state interest in the regulation of a subject within the State's constitutional power can justify limiting First Amendment Freedoms." *N.A.A.C.P.* v. *Button*, 83 S. Ct. 328, 341 (1963). The key phrase is "compelling state interest." There being no question that peaceful picketing falls under the protection of the First Amendment (see *N.A.A.C.P.* v. *Button, supra*, 83 S. Ct. at 348-49 (dissent); *Thornhill* v. *Alabama*, 310 U.S. 88 (1940)), the appropriate inquiry is whether the State of Texas had some compelling reason for prohibiting picketing of the Navigation District. The answer must be that no such compulsion existed. For one reason, there is not one shred of evidence in the present case that the State of Texas was being denied anything but money — profits on its operations at the ship channel, or that government was in any danger of collapse. For a second reason, it is perfectly clear that the District could have continued to make its profit without enjoining the picketing. If it be held in a case such as this that employees of government may not lawfully respect a picket line, then, all the Navigation District had to do was require its employees, members of Local 1530, to cross the picket line, and this could have been easily accomplished by obtaining an injunction, directing these employees not to strike.

As to loss of profits, Petitioners can only say that this is a risk that the State ought to bear when it engages in private enterprise. This assertion finds support in such cases as *New York* v. *United States*, 326 U.S. 572, 579 (1946) (federal tax on mineral water sold by state upheld), *Allen* v. *Regents*, 304 U.S. 439 (1938) (tax on profit made by state on athletic contests upheld); *South Carolina* v. *United States*, 199 U.S. 437 (1905) (tax on state liquor sales upheld).

On the other point, it is Petitioners' position that it was unnecessary for the State to abrogate First Amendment rights in order to maintain its profits (the interest sought to be protected). This leads inescapably to the conclusion that the State's choice of remedies was improper. See *Thomas* v. *Collins*, 323 U.S. 516, 539-40 (1945), and see particularly Mr. Justice Jackson's concurring opinion, 323 U.S. at 544.

Petitioners are of course aware of the decisions of this Court holding that picketing is not *pure* speech and that, therefore, picketing is subject to regulation, and even prohibition, where the regulation has a reasonable relationship to a proper governmental objective and does not unduly interfere with individual rights. See *International Brotherhood of Teamsters* v. *Vogt*, 354 U.S. 284 (1957). Thus, as pointed out by the dissent in the *Button* case, *supra*, 83 S. Ct. at 349, a state may enjoin mass picketing with its attendant threat to life and property and may enjoin picketing for an unlawful purpose.

At first glance, the latter rule might appear to be applicable here. But the rule cannot be read as broadly as the State of Texas contends. To do so would permit the states to regulate and enjoin virtually all picketing, something that was specifically denied them in the *Vogt* case, 354 U.S. at 295. Under the "weights and balances" test of these decisions, one must calibrate the interest of the state against the right invaded. Here, the only interest asserted by the State is the type that is paid on principle. This, Petitioners respectfully urge, is of light substance when compared to the right of free speech (more fundamentally, the right to voice protest against governmental action) being impinged by the State. This disproportion is magnified by the fact that the State did not have to enjoin the picketing in order to protect its pocket-book. As pointed out previously, if the employees of the District

had no right to respect the picket line, an injunction against Local 1530 would have been sufficient, and there was no need for the blanket prohibitions which, it is submitted, deprived Petitioners other than Local 1350 of their rights under the First and Fourteenth Amendments.

There is no finding of a conspiracy between the Locals. Indeed, a conspiracy is not suggested by the State. Moreover, there is no showing that reprisals would have been taken against Local 1530 for crossing the picket line. Thus, such cases as *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949) are readily distinguishable. Further, the trial court's finding that a purpose of the picketing was to force the District to enter into a collective bargaining agreement with the I.L.A. was forcefully attacked on appeal, and the appellate court specifically declined to place reliance on such finding. No more is presented here than a finding that Locals 872 and 1273 picketed to induce employees of the Navigation District to put pressure on the District to do the right thing — to permit longshoremen to work as they always have. Since this type of economic pressure is the purpose of all picketing, the State has, in effect, absolutely denied to its citizens the right to picket against it. This blanket prohibition ought not go unchallenged. Petitioners respectfully contend that Article 5154(c) is unconstitutional in its application to the present case.

(2) Prior decisions of this Court establish that, in the absence of compelling precedent establishing a lack of jurisdiction of the Labor Board, a State may not intervene in labor disputes which are arguably protected or prohibited by the LMRA, 29 U.S.C.A. 151, et seq. See, e.g., *M.E.B.A.* v. *Interlakes S.S. Co.*, 370 U.S. 173 (1962); *San Diego Building Trade Council* v. *Garmon*, 359 U.S. 236 (1959).

The "compelling precedent" cited here to justify State intervention in an admitted labor dispute is a line of decisions of the Labor Board declining jurisdiction in cases where the "employer" is a governmental body. See New Bedford Steamship Authority, 127 N.L.R.B. 1322; Papermakers Importing Co., 166 N.L.R.B. 267; 29 U.S.C.A. 152(2). In addition, however, the Appellate Court relied in large measure on the Supreme Court of Texas' decision in Ex Parte George, 358 S.W. 2d 590 (1962), particularly that part of the decision wherein it is said

that a State court may intervene in a labor dispute within the jurisdiction of the Board if some State law is being violated, even though the conduct is arguably protected by the L.M.R.A. This, of course, is an erroneous view of the law. Ex Parte *George*, 31 U.S. Law Week 3164 (1962).

Petitioners' contention is that the Board is charged with the initial responsibility of determining its jurisdiction. As tersely stated in the *M.E.B.A.* case: "While the Board's decision is not the last word, it must assuredly be the first." 370 U.S. at 176. Further, it may well be that the Board would have accepted jurisdiction under the particular facts here, since the governmental body had assumed the economic position of a private employer.

There can be little doubt that Congress has the power to regulate State activities outside the traditional sphere of governmental activities. E.g., *South Carolina* v. *United States*, 199 U.S. 437 (1905). And the legislative history does not seem to absolutely prohibit such a construction of Section 152 (2). Compare 1947 U.S. Code Congressional Service, p. 1139.

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari be granted in the present case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 28th day of February, 1963, a true and correct copy of the foregoing was served upon Messrs. Fulbright, Crooker, Freeman, Bates & Jaworski, Attorneys for Respondent, Harris County-Houston Ship Channel Navigation District, by placing the same in an envelope which was addressed to the said Messrs. Fulbright, Crooker, Freeman, Bates & Jaworski, who maintain offices in the Bank of the Southwest Building, Houston, Texas, postage prepaid, and depositing the same in the United States mail.

.....

Arthur J. Mandell

NO. 585,712

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

HARRIS COUNTY-HOUSTON SHIP
CHANNEL NAVIGATION DISTRICT

Plaintiff,

v.

SOUTH ATLANTIC & GULF COAST
DISTRICT OF THE INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION,
INDEPENDENT, ET AL

Defendants.

ORDER

This cause came on to be heard upon the verified petition of Harris County-Houston Ship Channel Navigation District for a temporary injunction, pending final adjudication with respect to this matter.

The Court proceeded to hear the pleadings, evidence and argument of counsel with respect to the various pleas of the Defendants and overruled the same. Thereafter, the Court found that the conduct of the Defendants, both singularly and collectively, was unlawful in violation of Article 5154c of the Texas Revised Civil Statutes and the public policy of the State of Texas and that by reason thereof Plaintiff sustained immediate, substantial and irreparable damage.

Now therefore, it is ORDERED, ADJUDGED and DECREED that pending the final adjudication with respect to this matter, the Defendants, International Longshoremen's Association, Local 1530 and Lloyd Allen, individually and as representative of said Local 1530, the officers, agents, representatives, servants, employees and members of said Defendant Local 1530 are hereby temporarily restrained and enjoined from engaging in any strike or concerted work stoppage

against the Harris County-Houston Ship Channel Navigation District, and it is further ORDERED, ADJUDGED and DECREED that the Defendants, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, Ralph A. Massey and Paul F. Koehne, individually and as representatives of said District, International Longshoremen's Association, Local 872, Raymond Duncan, individually and as representatives of said Local 872, International Longshoremen's Association, Local 1273, Willie C. Wells and Jim Clark, individually and as representatives of said Local 1273, the officers, agents, representatives, servants, employees and members of said Defendants, are hereby temporarily restrained and enjoined from establishing and/or maintaining any picket line or picket lines at or adjacent to the premises of and directed against the Harris County-Houston Ship Channel Navigation District, and further from committing or doing any act, word or deed, written or spoken, singly or in concert, which is intended, designed or calculated, to induce, persuade, order or bring about any strike, or work stoppage of any nature whatsoever by employees of Plaintiff.

This temporary injunction and the terms hereof shall continue in full force and effect during the pendency of this suit on the merits and until Plaintiff's prayer for permanent injunction is heard and determined. The Clerk of this Court shall issue a Temporary Writ of Injunction against the Defendants and each of them, accompanied by a certified copy of this Order; to which actions of the Court the Defendants then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas sitting at Houston, Texas.

ENTERED this 1st day of February, 1962, at 3:25 o'clock p.m.

BEN MOORHEAD
JUDGE
11th Judicial District Court
of Harris County, Texas

APPROVED:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By L. G. CLINTON
Attorneys for Plaintiff

APPROVED AS TO FORM ONLY:

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NO. 585,712

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151st JUDICIAL DISTRICT

HARRIS COUNTY-HOUSTON SHIP
CHANNEL NAVIGATION DISTRICT

Plaintiff,

v.

SOUTH ATLANTIC & GULF COAST
DISTRICT OF THE INTERNATIONAL
LONGSHOREMANS' ASSOCIATION,
INDEPENDENT, ET AL

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the request filed herein by the Defendants, SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMANS' ASSOCIATION, INDEPENDENT, RALPH A. MASSEY, PAUL F. KOEHNE, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 872, RAYMOND DUNCAN, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1273, WILLIE C. WELLS, JIM CLARK, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1530, and LLOYD ALLEN, the Court finds the following facts and makes the following conclusions of law:

FINDINGS OF FACT

1. That Plaintiff commenced operations of its Bulk Materials Handling Plant on September 21, 1961.

2. That the Bulk Materials Handling Plant was constructed on Plaintiff's property in Harris County, Texas, located adjacent to the Houston Ship Channel at Greens Bayou during 1961 at a cost of approximately $4,000,000.00.

3. That the funds expended in connection with the construction of the aforesaid Bulk Materials Handling Plant were raised by the sale of bonds repayable from the revenue derived from said Plant, and other facilities of Plaintiff.

4. That Plaintiff had assigned its operating and maintenance employees to various jobs in the aforesaid Bulk Materials Handling Plant, prior to the time that Plaintiff commenced operations thereof.

5. That Plaintiff's operating and maintenance employees had at all times prior to January 6, 1962, performed all work required in connection with the operations of the aforesaid Bulk Materials Handling Plant.

6. That all of Plaintiff's employees assigned to perform work at the Bulk Materials Handling Plant were members of Defendant Local 1530, or Operating Engineers Local 450.

7. That on January 5, 1962, the South Atlantic & Gulf Coast District of the International Longshoremens' Association, Independent, International Longshoremens' Association, Locals 872 and 1273, by their officers and/or representatives requested that certain work at the Bulk Materials Handling Plant be assigned to members of, and other persons working through the hiring halls of, Defendant Locals 872 and 1273.

8. That, as Plaintiff refused to comply with the aforesaid request, the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, and International Longshoremen's Association, Locals 872 and 1273 caused two (2) pickets to be established at the intersection of Penn City Road and the only road leading into Plaintiff's aforesaid Bulk Materials Handling Plant at approximately 7:30 a.m. on January 6, 1962.

That one of the aforesaid pickets carried a sign which read as follows:

Harris County Houston Ship Channel
Navigation District
Gulf Has A Stevedores
Labor Dispute
with
ILA Local No. 872
Longshoremen.

That the other aforesaid picket carried a sign which read as follows:

Labor Dispute
with
ILA Local No. 1273
Longshoremen

9. That at the time of the establishment of the aforesaid picket lines, the ship, RAMON de LARRINAGA, was moored at Plaintiff's Bulk Materials Handling Plant awaiting to be unloaded by the use of Plaintiff's aforesaid handling facilities.

10. That when Plaintiff's employees, who were scheduled to work at the aforesaid Bulk Plant, arrived at approximately 8:00 a.m. on January 6, 1962, each of them refused to cross the picket lines.

11. That Plaintiff was unable to begin unloading the cargo of the ship RAMON de LARRINAGA as a result of Plaintiff's said employees' refusal to cross the aforesaid picket lines.

12. That the establishment of aforesaid picket lines on January 6, 1962, induced and/or otherwise caused Plaintiff's employees to engage in a strike and/or organized work stoppage against Plaintiff.

13. That at approximately 3:00 p.m. on January 6, 1962, said picket lines were taken down long enough to permit certain members of Local 1273 to enter Plaintiff's premises and to go aboard said vessel and to be available for work as required by a court order entered in another proceeding, but immediately thereafter said picket lines were re-established and Plaintiff's employees continued their refusal to cross the picket lines.

14. That the South Atlantic & Gulf Coast District, of the International Longshoremens' Association, Independent, and International Longshoremens' Association, Locals 872 and 1273, by their officers and/or representatives have repeatedly requested and continue to request that certain work at the Plaintiff's Bulk Materials Handling Plant be performed by members of, and other persons working through the hiring halls of, Defendant Locals 872 and 1273.

15. That the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273, by their officers

and/or representatives demanded that Plaintiff recognize said labor organizations as the bargaining agent of employees to be assigned to perform certain work at the Plaintiff's Bulk Materials Handling Plant.

16. That the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273 by their officers and/or representatives demanded that Plaintiff agree to a collective bargaining contract covering employees to be assigned to perform certain work at Plaintiff's Bulk Materials Handling Plant.

17. That there is reasonable cause to believe that the aforesaid picket lines shall be re-established and maintained in the future unless the temporary injunction as prayed for by Plaintiff is issued to restrain such occurrences.

18. That there is reasonable cause to believe that the strike and or organized work stoppage of Plaintiff's employees will continue unless the temporary injunction as prayed for by Plaintiff is granted.

19. That as a result of the aforesaid strike, picketing, and organized work stoppage, Plaintiff has sustained substantial and irreparable damage of such character to render money wholly inadequate compensation.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction over the Plaintiff and Defendants and over the subject matter of this action.

2. That Plaintiff is a governmental agency of the State of Texas, and a political subdivision thereof, within the meaning of the provisions of Article 5154c of the Texas Revised Civil Statutes.

3. That the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872, 1273 and 1530 are labor organizations as defined by the provisions of Article 5154c of the Texas Revised Civil Statutes.

4. That Plaintiff is entitled to the protection afforded by the provisions of Article 5154c of the Texas Revised Civil Statutes.

5. That Plaintiff is engaged in the performance of governmental functions in the operation of its Bulk Materials Handling Plant.

6. That even if Plaintiff were not engaged in the performance of governmental functions in the operations of its aforesaid Bulk Plant, but that such was a proprietary function, Plaintiff would still be entitled to the protection afforded by the provisions of Article 5154c of the Texas Revised Civil Statutes.

7. That the refusal of Plaintiff's employees to cross the aforesaid picket lines constituted a strike and/or organized work stoppage within the meaning of the provisions of Article 5154c of the Texas Revised Civil Statutes.

8. That the strike and/or organized work stoppage being carried on by employees of Plaintiff against Plaintiff is unlawful under the provisions of Article 5154c of the Texas Revised Civil Statutes, and in contravention of the public policy of the State of Texas.

9. That the establishment and maintenance of the aforesaid picket lines against Plaintiff by the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273, by their officers, representatives, servants and employees, in furtherance of demands for recognition by Defendant Locals 872 and 1273 as bargaining agent, and in furtherance of demands by Defendant Locals 872 and 1273 for a collective bargaining contract, is unlawful under the provisions of 5154c of the Texas Revised Civil Statutes, and in contravention of the public policy of the State of Texas.

10. That the establishment and maintenance of the aforesaid picket lines against Plaintiff by the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Locals 872 and 1273, by their officers, representatives, servants and employees, inducing and otherwise causing employees of Plaintiff to engage in a strike and or organized work stoppage against Plaintiff is unlawful under the provisions of Article 5154c, and in contravention of the public policy of the State of Texas.

11. That Plaintiff is not an "employer" within the meaning of the National Labor Relations Act, as amended.

12. That the employees of Plaintiff are not "employees" within the meaning of the National Labor Relations Act, as amended.

13. That the strike and/or organized work stoppage engaged in by employees of Plaintiff is neither protected nor prohibited conduct under any of the provisions of the National Labor Relations Act, as amended.

14. That the establishment and maintenance of picket lines by the Defendants, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273 by their officers, representatives, servants and employees, is neither protected nor prohibited under any of the provisions of the National Labor Relations Act, as amended.

15. That this Court has jurisdiction to restrain the unlawful conduct of Defendants as prayed for by Plaintiff.

16. That the provisions of Article 5154c of the Texas Revised Civil Statutes are constitutional under the Constitutions of the United States of America and of the State of Texas.

17. That the granting of a temporary injunction as prayed for by Plaintiff does not violate any constitutional guarantee secured to Defendants, their officers, representatives, servants and employees, by either the Constitution of the United States of America or the Constitution of the State of Texas.

18. That immediate, irreparable and substantial damage will result to Plaintiff unless the injunction is issued.

19. That greater damage would result to Plaintiff by denying this relief than would result to Defendants by granting same.

20. That Plaintiff has no adequate remedy at law.

SIGNED AND ENTERED this 27th day of February, 1962.

/s/ BEN MOREHEAD
Judge

11th Judicial District Court of
Harris County, Texas

NO. 13985

SOUTH ATLANTIC & GULF COAST DISTRICT OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

Appellants,

vs.

HARRIS COUNTY - HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee.

Appeal from District Court of Harris County

This is an appeal from an order temporarily enjoining appellant, International Longshoremen's Association, Local 1530, from engaging in any strike or concerted work stoppage against appellee, Harris County-Houston Ship Channel Navigation District, and temporarily enjoining the South Atlantic and Gulf Coast District of the International Longshoremen's Association, Independent, and International Longshoremen's Association, Locals 872 and 1273, from establishing and/or maintaining a picket line or picket lines at or adjacent to the premises of and directed against the appellee. The order also enjoined a number of persons in their individual and representative capacities, as well as all officers, agents, representatives, servants, employees and members of those unions.

Harris County-Houston Ship Channel Navigation District (hereinafter referred to as The District) is a governmental agency of the State of Texas, and a political subdivision thereof, existing under Art. XVI, Sections 52 and 59, of the Constitution of the State of Texas.

The District owns and operates wharves, warehouse facilities, grain elevators and bulk materials handling facilities in competition with private industry in the Port of Houston. It is engaged in interstate and foreign commerce.

During the year 1961 The District constructed a bulk materials handling plant at a cost of approximately $4,000,000.00 raised by the

sale of bonds repayable from the revenue to be derived from the operation of said plant and the other facilities owned by The District. This plant began operations on or about September 21, 1961 and prior to that date The District had assigned its employees to the various jobs involved in its operation.

Prior to the completion of the plant Local 1530, from whom The District's employees had been selected, and Locals 872 and 1273 disputed among themselves as to jurisdiction over the workmen to be employed in the new plant. Locals 872 and 1273 requested that The District employ workmen for work similar to that customarily performed by longshoremen through their hiring halls. Ralph A. Massey, President of the South Atlantic and Gulf Coast District of the International Longshoremen's Association, Independent, requested a meeting with The District and the Locals. At this meeting the differences were made known to Mr. J. P. Turner, General Manager of The District, who informed the meeting that he felt that the work was not longshoremen work and that he proposed to assign the work to members of The District's operating and maintenance group (members of Local 1530). Thereafter Mr. Massey submitted a plan of dividing the work among the Locals to The District and the Locals and stated that the executive officers of the International District were insisting that the Locals concur in this plan. Mr. Turner informed all interested parties that he was assigning the work to the maintenance and operating group. Another meeting was held on or about January 5, 1962, at which Mr. Turner denied renewed requests that the work be assigned according to the International District's plan. The following day two pickets carrying signs advertising a labor dispute were posted on the only road leading into the bulk materials handling plant. "The District's employees refused to cross the picket lines and The District was unable to unload a waiting ship at that plant. The ship was moved to another dock, after which the pickets were removed."

The jurisdictional dispute between the Locals was settled between the locals involved, but The District, insisting on its right to assign the work to its employees in the operations and maintenance group, brought suit for injunction resulting in the order from which this appeal was taken.

At the trial representatives of Locals 872 and 1273 testified that they were still requesting the work and intended to use all peaceable means to secure it for their membership. They testified that they could not say whether they would or would not post pickets again if another attempt was made to use the facilities of the bulk loading plant.

Appellate courts will not disturb the order of a trial court granting a temporary injunction to preserve the status quo unless the trial judge abused the broad discretion vested in him in determining the necessity for such action. Transport Co. of Texas v. Robertson Transports, Tex. S. Ct., 261 S. W. 2d 549; Texas Foundries v. International Moulders & Foundry Workers' Union, Tex. S. Ct., 248 S. W. 2d 460. A careful study of the testimony reveals no such abuse of discretion. While appellants contend that there was no evidence of irreparable damage, we cannot agree. The record shows that appellee has been effectively denied the use of a $4,000,000.00 plant and that as a result it has suffered a loss of revenue. The evidence sustains the trial court's finding that appellants threaten to continue picketing the plant. We think this sufficient evidence of irreparable injury in view of the fact that private facilities in Port Houston and other ports are available for use by prospective customers.

However appellants say that the trial court lacks jurisdiction to issue the injunction because exclusive jurisdiction over the matter is granted to the National Labor Relations Board by the National Labor Relations Act (Title 29, U.S.C.A., Secs. 151 et seq.) and, in support of their contention, rely on such cases as Guss v. Utah Labor Relations Board, 353 U. S. 1, 77 S. Ct. 598; Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 425, AFL, v. Fairlawn Meats, Inc., 353 U. S. 20, 77 S. Ct. 353; and San Diego Building Trades Council, Millmen's Union Local 2020 v. Garmon, 359 U. S. 236, 79 S. Ct. 773.

Appellee asserts that in no case do the State courts of Texas have jurisdiction of a labor relations matter affecting interstate commerce, citing Ex parte Twedell, Tex. S. Ct., 309 S. W. 2d 834, and Ex parte Dilley, Tex. S. Ct., 334 S. W. 2d 425. We do not consider that the cases cited stand for the proposition urged. The State courts clearly have jurisdiction to enforce collective bargaining agreements although the employer is engaged in interstate commerce. Charles Dowd Box

Co., Inc. v. John F. Courtney et al, ... U. S. ....., opinion delivered February 19, 1962, and reported in 30 L. W. 4136. Ex parte Dilley, supra, held:

> "We do not hold that we would never have power to regulate activities in any way relating or touching the Labor Management Relations Act, even though such affected interstate commerce. There now seem to be four means of circumstances under which a state court will be held to have power to regulate, although it would not or might not otherwise be so empowered in light of federal pre-emption. They are: (1) When jurisdiction has been ceded to the state by the National Labor Relations Board pursuant to a cession agreement made under authority of Section 10(a) of the federal labor law (29 U. S. C. A. § 160(a) . . . . Ex Parte Twedell, supra; Guss v. Utah Labor Relations Board, supra; (2) Where the activity is of merely 'peripheral concern' of the Labor Management Relations Act, or in which the conduct 'touched interests so deeply rooted in local feelings and responsibility that * * * we would not infer that Congress had deprived the States of the power to act.' San Diego Bldg. Trades Council v. Garmon, supra; International Association of Machinists v. Gonzales, 356 U.S. 617, 78 S. Ct. 923, 2 L. Ed. 2d 1018. (3) Where jurisdiction has not been declined, but has been clearly refused by the National Labor Relations Board. See both Garmon cases, Weber, County of Door, and Guss cases, all cited supra. . . .; and (4) Where the conduct involved constitutes violence or threats to the public order."

Certainly this case stands for the proposition that the State courts are not deprived of jurisdiction merely because an employer (as that word is defined in the Labor Relations Act) is engaged in interstate commerce.

The conduct enjoined by the trial court (striking against a governmental agency of the State of Texas, and picketing the agency for the purpose of inducing or causing its employees to engage in a strike or organized work stoppage) is conduct which "touched interests so deeply rooted in local feelings and responsibility . . . "within subdivision (2) set out in the Dilley case. In addition the fact that the National Labor Relations Board has clearly refused, and not merely declined, jurisdiction in labor disputes between governmental agencies of the State and its employees would seem to bring this case within subdivision (3) quoted above from the Dilley case.

We note also that in Ex parte George, ... S. W. 2d ....., Vol. 5, Texas Supreme Court Journal, p. 185, the Supreme Court of Texas said:

> "Relator refers to our opinion in Ex Parte Dilley, supra, wherein we said: 'There now seems to be four means or circumstances under which a state court will be held to have power to regulate, although it would not or might not otherwise be empowered in light of federal pre-emption.' He contends that none of the four circumstances exist in the instant case. It should be noted that the four means or circumstances we mentioned were stated in more or less general terms. We did not mean to place a limitation upon the circumstances under which a state court will be held to have power to regulate."

The National Labor Relations Act, 29 U.S.C.A., Sec. 152 (2) and (3), provides: "The term 'employer' . . . shall not include . . . any state or political subdivision.

"The term 'employee' shall not include . . . any individual employed . . . by any other person who is not an employer as defined herein."

The National Labor Relations Board has given effect to the unambiguous exclusionary wording of Sections (2) and (3). Papermakers Importing Co., Inc., 116 U.L.R.B. 267; New Bedford Steamship Authority, 127 N.L.R.B. 1322. The same result has been reached by the Supreme Courts of *Georgia*, International Longshoremen's Association v. Georgia Ports Authority, ... S. E. 2d ....., 49 L.R.R.M. 2788 (decided March 8, 1962); *Oklahoma*, International Brotherhood v. Grand River Dam Authority, 292 P. 2d 1018, and *Tennessee*, City of Alcoa v. International Brotherhood of Electrical Workers, 308 S. W. 2d 476. The National Labor Relations Act does not purport to regulate labor relations between subdivisions of a state, such as appellee, and its employees. Therefore appellants' conduct was neither prohibited nor protected by the provisions of the National Labor Relations Act.

The courts of this State have jurisdiction to prohibit by injunction peaceable picketing for an unlawful purpose even though freedom of speech is thereby restricted. Hughes v. Superior Court of California for Contra Costa County, 339 U. S. 460, 70 S. Ct. 718; Ex parte George, supra; Cain, Brogden & Cain, Inc. v. Local Union No. 47, etc., Tex. S. Ct., 285 S. W. 2d 942.

Appellants attack the court's finding of fact that the picketing was for the purpose of inducing appellee's employees to engage in a strike or organized work stoppage. In Ex parte George, supra, the Supreme Court held that evidence that George picketed the gates used by the refinery's employees to go to work was sufficient to show that the purpose of the picketing was to induce those employees to honor the picket line, thereby breaching the no-strike provision of their contract. This case, therefore, is authority for the proposition that refusal to cross a picket line is a strike or organized-work stoppage, and that placing pickets on the only road leading into the bulk handling plant would be evidence that the purpose of the activity was to induce appellee's employees to honor the picket line. Art. 5154c, § 3, V.A.T.S., provides that it shall be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. We think it follows that the public policy of this State forbids any person or organization to induce or seek to induce a public employee to engage in such a strike. In view of this holding, we think it unnecessary to determine whether or not the evidence in this case establishes that a purpose of the picketing was to secure from The District a collective bargaining contract or recognition as a collective bargaining agency, purposes which are also forbidden by Art. 5154c. Cain, Brogden & Cain, Inc. v. Local Union No. 47, etc., 155 Tex. 304, 285 S. W. 2d 942; Texas State Federation of Labor v. Brown and Root, Inc., 246 S. W. 2d 938, Tex. Civ. App., ref., n.r.e.

We do not think that the provision of Art. 5154c, V.A.T.S., declaring it to be the public policy of this State that employees of the State or a political subdivision thereof shall not have the right to strike, or our decision that public policy prohibits peaceable picketing for the purpose of inducing such a strike, violates any constitutional guarantee secured to any of the appellants by either the Constitution of the United States of America or the Constitution of the State of Texas. In Hughes v. Superior Court, 339 U. S. 460, the Supreme Court of the United States said:

> "'[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states,' Palko v. State of

Connecticut, 302 U.S. 319, 327, 53 S. Ct. 149, 153, 82 L. Ed. 288, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' . . .

". . . . However general or loose the language of opinions the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for is disallowance . . . . 'A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' "

In International Brotherhood of Teamsters, etc. v. Vogt, 354 U. S. 284, 77 S. Ct. 1166, the Supreme Court of the United States, after reviewing previous cases, stated: "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at *preventing effectuation of that policy.*" (emphasis added)

Courts of other states have upheld state statutes prohibiting strikes against governmental agencies where these constitutional questions were raised. City of Detroit v. Division 26 of Amalgamated Association, etc. 51 N. W. 2d 228, appeal dismissed 344 U. S. 805, rehearing denied 344 U. S. 882; City of Los Angeles v. Los Angeles Bldg. & Const. Trades Council, 210 P. 2d 305; I.L.A. v. Georgia Ports Authority, ... S.W. 2d ....., 49 L.R.R.M. 2788.

Whether or not appellee was engaged in a governmental function or a proprietary function in the operation of the bulk loading plant is immaterial to a decision of this case. 31 A.L.R. 2d 1145, at p. 1149; City of Alcoa v. Brotherhood of Electrical Workers, 308 S. W. 2d 476; City of Los Angeles v. Los Angeles Bldg. & Construction Trades Coun-

cil, supra: Bennett v. Brown County Water Improvement District, Tex. S. Ct., 272 S. W. 2d 498.

We have found it unnecessary to consider assignments of error Nos. 15 and 16 relating to the sufficiency of the evidence to support certain findings of fact presented on behalf of appellant Local No. 872. The evidence is sufficient to sustain all other findings of fact made by the trial court.

The judgment of the trial court is affirmed.

/s/ Tom F. Coleman
Associate Justice

Judgment rendered and opinion filed May 31, 1962.

No. 13985

IN COURT OF CIVIL APPEALS
HOUSTON

SOUTH ATLANTIC & GULF COAST DISTRICT OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

Appellants,

vs.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee.

Order Overruling Appellants' Motions for Rehearing

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A. D. 1961, present SPURGEON E. BELL, Chief Justice, and Associate Justices EWING WERLEIN and TOM F. COLEMAN.

In the cause

SOUTH ATLATIC & GULF COAST DISTRICT OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

No. 13985 *Appellants,*

vs.

From District Court of Harris County
Tr. Ct #585,712
Opinion by .....

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee,

the following order was entered on June 21, 1962:

"It is ordered that appellants' motions for rehearing, each and both, be overruled."

I, ROLA HAMM, Clerk of the Court of Civil Appeals for the First Supreme Judicial District of Texas, at the City of Houston, hereby certify that the foregoing is a true copy of an order entered herein by this Court in the above entitled and numbered cause as appears of record in Minute Book 14, Page 254.

IN WITNESS WHEREOF, I, hereunto set my hand and affix the seal of said Court at Houston this 25th day of February A. D. 1963.

/s/ ROLA HAMM
Clerk

By .....
Deputy

[SEAL]

NO. 585,712

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

HARRIS COUNTY-HOUSTON SHIP
CHANNEL NAVIGATION DISTRICT,

Plaintiff,

v.

SOUTH ATLANTIC & GULF COAST
DISTRICT OF THE INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION,
INDEPENDENT, ET AL,

Defendants.

ORDER

At the request of the Defendants, the above entitled and numbered cause came on for final hearing upon the verified petition of Plaintiff. Plaintiff announced that it was excepting to the following action taken in this matter by the Court:

> Denying and overruling of Plaintiff's Plea that the Trial Court was without jurisdiction to modify or alter the temporary injunction heretofore granted by such Court in this cause on the 1st day of February, 1962, as the Defendants herein have, since the date of the Court's entry of the temporary injunction Order, appealed from said Order to the Court of Civil Appeals for the First Supreme Judicial District Court at Houston, Texas which affirmed the issuance of such Order for a temporary injunction; and as Defendants on the 31st day of July, 1962, timely filed Applications for Writ of Error with the Supreme Court of the State of Texas, where Defendants' said Applications are now pending disposition.

Subject to the foregoing exception, the parties announced ready for trial on the merits, on Plaintiff's petition that the temporary injunction Order heretofore granted by the Court on the 1st day of February, 1962, be perpetuated and be made permanent.

The Court received and considered the evidence on the record made at the hearing on the temporary injunction which began on the 16th day of January, 1962, and the parties requested that the record made at the hearing heretofore held on tempofary injunction be considered as the evidence on this the hearing on the permanent injunction; and Plaintiff and Defendants announced that they had no further evidence to adduce on this the hearing on permanent injunction. As no additional evidence was offered by either Plaintiff or Defendants at this the hearing on permanent injunction, the Court having considered the entire record made at the hearing on the temporary injunction, makes the following Findings of Fact and makes the following Conclusions of Law:

FINDINGS OF FACT

1. That Plaintiff commenced operations of its Bulk Materials Handling Plant on September 21, 1961.

2. That the Bulk Materials Handling Plant was constructed on Plaintiff's property in Harris County, Texas, located adjacent to the Houston Ship Channel at Greens Bayou during 1961 at a cost of approximately $4,000,000.00.

3. That the funds expended in connection with the construction of the aforesaid Bulk Materials Handling Plant were raised by the sale of bonds repayable from the revenue derived from said Plant, and other facilities of Plaintiff.

4. That Plaintiff had assigned its operating and maintenance employees to various jobs in the aforesaid Bulk Materials Handling Plant, prior to the time that Plaintiff commenced operations thereof.

5. That Plaintiff's operating and maintenance employees had at all times prior to January 6, 1962, performed all work required in connection with the operations of the aforesaid Bulk Materials Handling Plant.

6. That all of Plaintiff's employees assigned to perform work at the Bulk Materials Handling Plant were members of Defendant Local 1530, or Operating Engineers Local 450.

7. That on January 5, 1962, the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent,

International Longshoremen's Association, Locals 872 and 1273, by their officers and or representatives requested that certain work at the Bulk Materials Handling Plant be assigned to members of, and other persons working through the hiring halls of, Defendant Locals 872 and 1273.

8. That, as Plaintiff refused to comply with the aforesaid request, the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, and International Longshoremen's Association, Locals 872 and 1273 caused two (2) pickets to be established at the intersection of Penn City Road and the only road leading into Plaintiff's aforesaid Bulk Materials Handling Plant at approximately 7:30 a.m. on January 6, 1962.

That one of the aforesaid pickets carried a sign which read as follows:

Harris County Houston Ship Channel
Navigation District
Gulf Has A Stevedores
Labor Dispute
With
ILA Local No. 872
Longshoremen

That the other aforesaid picket carried a sign which read as follows:

Labor Dispute
with
ILA Local No. 1273
Longshoremen

9. That at the time of the establishment of the aforesaid picket lines, the ship, RAMON de LARRINAGA, was moored at Plaintiff's Bulk Materials Handling Plant awaiting to be unloaded by the use of Plaintiff's aforesaid handling facilities.

10. That when Plaintiff's employees, who were scheduled to work at the aforesaid Bulk Plant, arrived at approximately 8:00 a.m. on January 6, 1962, each of them refused to cross the picket lines.

11. That Plaintiff was unable to begin unloading the cargo of the ship RAMON de LARRINAGA as a result of Plaintiff's said employees' refusal to cross the aforesaid picket lines.

12. That the establishment of aforesaid picket lines on January 6, 1962, induced and or otherwise caused Plaintiff's employees to engage in a strike and or organized work stoppage against Plaintiff.

13. That at approximately 3.00 p.m. on January 6, 1962, said picket lines were taken down long enough to permit certain members of Local 1273 to enter Plaintiff's premises and to go aboard said vessel and to be available for work as required by a court order entered in another proceeding, but immediately thereafter said picket lines were re-established and Plaintiff's employees continued their refusal to cross the picket lines.

14. That the South Atlantic & Gulf Coast District, of the International Longshoremens' Association, Independent, and International Longshoremens' Association, Locals 872 and 1273, by their officers and or representatives have repeatedly requested and continue to request that certain work at the Plaintiff's Bulk Materials Handling Plant be performed by members of, and other persons working through the hiring halls of, Defendant Locals 872 and 1273.

15. That the South Atlantic & Gulf Coast District of the International Longshoremens' Association, Independent, International Longshoremen's Association, Locals 872 and 1273, by their officers and or representatives demanded that Plaintiff recognize said labor organizations as the bargaining agent of employees to be assigned to perform certain work at the Plaintiff's Bulk Materials Handling Plant.

16. That the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273 by their officers and or representatives demanded that Plaintiff agree to a collective bargaining contract covering employees to be assigned to perform certain work at Plaintiff's Bulk Materials Handling Plant.

17. That there is reasonable cause to believe that the aforesaid picket lines shall be re-established and maintained in the future unless the temporary injunction as prayed for by Plaintiff is issued to restrain such occurrences.

18. That there is reasonable cause to believe that the strike and/or organized work stoppage of Plaintiff's employees will continue unless the temporary injunction as prayed for by Plaintiff is granted.

19. That as a result of the aforesaid strike, picketing, and organized work stoppage, Plaintiff has sustained substantial and irreparable damage of such character to render money wholly inadequate compensation.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction over the Plaintiff and Defendants and over the subject matter of this action.

2. That Plaintiff is a governmental agency of the State of Texas, and a political subdivision thereof, within the meaning of the provisions of Article 5154c of the Texas Revised Civil Statutes.

3. That the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872, 1273 and 1530 are labor organizations as defined by the provisions of Article 5154c of the Texas Revised Civil Statutes.

4. That Plaintiff is entitled to the protection afforded by the provisions of Article 5154c of the Texas Revised Civil Statutes.

5. That Plaintiff is engaged in the performance of governmental functions in the operation of its Bulk Materials Handling Plant.

6. That even if Plaintiff were not engaged in the performance of governmental functions in the operations of its aforesaid Bulk Plant, but that such was a proprietary function, Plaintiff would still be entitled to the protection afforded by the provisions of Article 5154c of the Texas Revised Civil Statutes.

7. That the refusal of Plaintiff's employees to cross the aforesaid picket lines constituted a strike and or organized work stoppage within the meaning of the provisions of Article 5154c of the Texas Revised Civil Statutes.

8. That the strike and or organized work stoppage being carried on by employees of Plaintiff against Plaintiff is unlawful under the provisions of Article 5154c of the Texas Revised Civil Statutes, and in contravention of the public policy of the State of Texas.

9. That the establishment and maintenance of the aforesaid picket lines against Plaintiff by the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273, by their officers, representatives, servants and employees, in furtherance of demands for recognition by Defendant Locals 872 and 1273 as bargaining agent, and in furtherance of demands by Defendant Locals 872 and 1273 for a collective bargaining contract, is unlawful under the provisions of 5154c of the Texas Revised Civil Statutes, and in contravention of the public policy of the State of Texas.

10 That the establishment and maintenance of the aforesaid picket lines against Plaintiff by the South Atlantic & Gulf Coast District of the International Longshoremen's Association, Locals 872 and 1273, by their officers, representatives, servants and employees, inducing and otherwise causing employees of Plaintiff to engage in a strike and or organized work stoppage against Plaintiff, is unlawful under the provisions of Article 5154c, and in contravention of the public policy of the State of Texas.

11. That Plaintiff is not an "employer" within the meaning of the National Labor Relations Act, as amended.

12. That the employees of Plaintiff are not "employee" within the meaning of the National Labor Relations Act, as amended.

13. That the strike and or organized work stoppage engaged in by employees of Plaintiff is neither protected nor prohibited conduct under any of the provisions of the National Labor Relations Act, as amended.

14. That the establishment and maintenance of picket lines by the Defendants, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, International Longshoremen's Association, Locals 872 and 1273 by their officers, representatives, servants and employees, is neither protected nor prohibited under any of the provisions of the National Labor Relations Act, as amended.

15. That this Court has jurisdiction to restrain the unlawful conduct of Defendants as prayed for by Plaintiff.

16. That the provisions of Article 5154c of the Texas Revised Civil Statutes are constitutional under the Constitutions of the United States of America and of the State of Texas.

17. That the granting of a temporary injunction as prayed for by Plaintiff does not violate any constitutional guarantee secured to Defendants, their officers, representatives, servants and employees, by either the Constitution of the United States of America or the Constitution of the State of Texas.

18. That immediate, irreparable and substantial damage will result to Plaintiff unless the injunction is issued.

19. That greater damage would result to Plaintiff by denying this relief than would result to Defendants by granting same.

20. That Plaintiff has no adequate remedy at law.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the temporary injunction heretofore granted herein on the 1st day of February, 1962, should be, and the same is hereby, made perpetual and permanent.

WHEREFORE, it is ORDERED, ADJUDGED and DECREED that the Defendants, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, and Lloyd Allen, individually and as representative of said Local 1530, the officers, agents, representatives, servants, employees and members of said Defendant Local 1530 be; and are hereby, perpetually enjoined from and that they shall desist from engaging

in any strike or organized work stoppage against the HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT; that it is further ORDERED, ADJUDGED and DECREED that the Defendants, SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, Ralph A. Massey and Paul F. Koehne, individually and as representatives of said District, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 872, Raymond Duncan, individually and as representative of said Local 872, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1273, Willie C. Wells and Jim Clark, individually and as representatives of said Local 1273, the officers, agents, representatives, servants, and employees and members of said Defendants be, and are hereby perpetually enjoined, and that they shall desist from establishing and or maintaining any picket line or picket lines at or adjacent to the premises of and directed against the HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, and further from committing or doing any act, word or deed, written or spoken, singularly or in concert which is intended, designed or calculated, to adduce, persuade, order or bring about any strike, or work stoppage of any nature whatsoever by employees of Plaintiff; and further that Plaintiff do have and recover from the Defendants, jointly and severally, all costs on Plaintiff's behalf expended.

The Clerk of this Court shall issue a Permanent Writ of Injunction against the Defendants, and each of them, accompanied by certified copies of this Order; to which actions of the Court the Defendants then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas sitting at Houston, Texas.

ENTERED this 11th day of September, 1962, at 1:50 o'clock P.M.

s/ JUDGE BEN MOOREHEAD
JUDGE

11th Judicial District Court of
Harris County, Texas

APPROVED AS TO FORM ONLY:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By /s/ L. G. CLINTON
Attorneys for Plaintiff

SEWALL MYER

By /s/ SEWALL MYER
Attorney for Defendants

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MANDEL & WRIGHT

By /s/ ARTHUR J. MANDELL
Attorneys for Defendant,

International Longshoremen's Associatio local 872

NO. 14112

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL.

Appellants,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee.

Appeal from District Court of Harris County

This is an appeal from the judgment of the trial court permanently enjoining appellants from establishing and or maintaining a picket line or picket lines at or adjacent to the premises of and directed against appellee. The order enjoined a number of persons in their individual and representative capacities, as well as all officers, agents, representatives, servants, employees and members of those unions.

Previous to the judgment granting a permanent injunction the trial court had granted a temporary injunction. The appellants here appealed to this Court from the judgment granting the temporary injunction. In our Cause No. 13985, styled the same as this case, we rendered an opinion on May 31, 1962, affirming the judgment of the trial court. On June 21, 1962, we overruled apellants' motion for rehearing. In July, 1962, appellants in that cause timely filed their application for writ of error to the Supreme Court. Such application is now pending there.

On September 10, 1962, a trial was had on appellee's petition for a permanent injunction. Appellee challenged the jurisdiction of the trial court to hear the application for permanent injunction while the appeal from the order granting the temporary injunction was pending. This plea was overruled. After the plea was overruled, the parties

stipulated and agreed, subject to appellee's plea to the jurisdiction, that the evidence introduced before the court on the temporary injunction hearing would be submitted to the trial court. This was done. The same judge who had heard the temporary injunction proceeding also heard the permanent injunction. No new evidence was introduced and no new pleadings were filed. The transcript was timely filed in this Court. The parties have filed an agreement asking that we consider the record in Cause No. 13985, including the statement of facts and briefs on file here. They waive argument. They say neither has additional argument or authorities except on appellee's jurisdictional plea. Appellee has filed a brief on the plea to the jurisdiction.

We have considered the briefs and statement of facts in said cause as also being filed in this cause and base our disposition of this cause on such and the transcript and jurisdictional brief filed alone in this cause.

The trial court correctly held it had jurisdiction to hear the case on application for permanent injunction though an appeal was pending from a previous order granting a temporary injunction. Jurisdiction remains in the trial court to try the case on its merits. Rhoton v. Texas Land & Mortgage Co., 80 S.W. 2d 763, C.C.A., writ ref.; Magnolia Petroleum Co. v. Blankenship, 70 S.W. 2d 258, C.C.A., no writ hist.; Hill v. Pure Oil Co., 38 S.W. 2d 855, C.C.A., error dism.

In our opinion in Cause No. 13985 we fully discussed the law we consider applicable. We entertain the same views we there expressed. We hereby adopt that opinion as the opinion of the Court in this cause, except for unnumbered paragrapl. 8, which paragraph deals with the test of determining whether the trial court was in error in granting a temporary injunction. Otherwise the opinion is fully applicable in this cause.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and opinion filed September 20, 1962.

No. 14112

IN COURT OF CIVIL APPEALS
HOUSTON

SOUTH ATLANTIC & GULF COAST DISTRICT OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

Appellants,

vs.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee.

Order Overruling Appellants' Motions for Rehearing

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A. D. 1961, present SPURGEON E. BELL, Chief Justice, and Associate Justices EWING WERLEIN and TOM F. COLEMAN,

In the cause

SOUTH ATLANTIC & GULF COAST DISTRICT OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

No. 14112 *Appellants,*

vs.

From District Court of Harris County
Tr Ct =585,712
Opinion by .....

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Appellee,

the following order was entered on September 27, 1962:

"It is ordered that appellants' motion for rehearing be overruled."

I, ROLA HAMM, Clerk of the Court of Civil Appeals for the First Supreme Judicial District of Texas, at the City of Houston, hereby certify that the foregoing is a true copy of an order entered herein by this Court in the above entitled and numbered cause as appears of record in Minute Book 14, Page 267.

IN WITNESS WHEREOF, I, hereunto set my hand and affix the seal of said Court at Houston this 27th day of February A. D. 1963.

/s/ ROLA HAMM
Clerk

By .....
Deputy

[SEAL]

IN THE SUPREME COURT OF TEXAS
AUSTIN

No. A-9177

December 5, 1962

From Harris County,
First District

South Atlantic & Gulf Coast District of the
International Longshoremen's Association,
Independent, et al.

vs.

Harris County-Houston Ship Channel Navigation District

Application of South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, et al. and application of International Longshoremen's Association, Local 872, et al. for writs of error to the Court of Civil Appeals for the First Supreme Judicial District having been duly considered by the Court, and the Court having determined that same present no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that the applications be, and hereby are, refused.

It is further ordered that applicants, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, et al. and International Longshoremen's Association, Local 872, et al. (Named as appellants in the judgment of the Court of Civil Appeals), and their surety, Fidelity & Deposit Company of Maryland, pay all costs incurred on these applications.

No. A-9177

From Harris County,
First District

January 16, 1963

South Atlantic & Gulf Coast District of the
I. L. A., Independent, et al.

vs.

Harris County-Houston Ship Channel Navigation District

Motion of International Association of Longshoremen's Association, Local No. 872, et al., for rehearing of application for writ of error in the above numbered and entitled case having been duly considered by the Court, it is ordered that said motion be, and hereby is, overruled.

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the attached page contains true and correct copies of orders of the Supreme Court of Texas on application for writ of error and on motion for rehearing of application for writ of error, in the case of SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL. vs. HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, No. A-9177, from Harris County, First District, as such orders appear in the minutes of said Court under the dates of December 5, 1962 and January 16, 1963.

IN TESTIMONY WHEREOF, Witness my hand and the seal of the Supreme Court of Texas, at the City of Austin, on this 15th day of February, 1963.

GEO. H. TEMPLIN, CLERK

By /s/ GARSON R. JACKSON
Deputy.

[SEAL].

IN THE SUPREME COURT OF TEXAS
AUSTIN

NO. A-9242

December 5, 1962

From Harris County,
First District

South Atlantic & Gulf Coast District of the
International Longshoremen's Association,
Independent, et al.

vs.

Harris County-Houston Ship Channel Navigation District

Application of International Longshoremen's Association, Local 1530, for writ of error to the Court of Civil Appeals for the First Supreme Judicial District having been duly considered by the Court, and the Court having determined that same presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that the application be, and hereby is, refused. It is further ordered that applicant, International Longshoremen's Association, Local 1530, and Lloyd Allen as representative of said Local 1530, and surety, Fidelity and Deposit Company of Maryland, pay all costs incurred on this application.

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of order of the Supreme Court of Texas on application for writ of error in the case of SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL. vs. HARRIS COUNTY-HOUSTON SHIP

CHANNEL NAVIGATION DISTRICT, No. A-9242, as such order appears in the minutes of said Court under the date of December 5, 1962.

IN TESTIMONY WHEREOF, Witness my hand and the seal of the Supreme Court of Texas, at the City of Austin, on this 15th day of February, 1963.

GEO. H. TEMPLIN, CLERK

By /s/ GARSON R. JACKSON
Deputy.

[SEAL]

---

* Although the body of the above order mentions only Local 1530, it is perfectly clear from the record that the order denies the application filed on behalf of all Petitioners.

U. S. CODE ANNOTATED

§ 152. Definitions

• • •

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

• • •

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title. July 5, 1935, c. 372, § 7, 49 Stat. 452; June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title I, § 101, 61 Stat. 140.

VERNON'S CIVIL STATUTES OF TEXAS

Art. 5154c. Public employees, collective bargaining contracts with organizations representing; strikes; loss of civil service and other rights

Section 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State,

to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

Sec. 5. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

Sec. 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect,

impair, or invalidiate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved. Acts 1947, 50th Leg., p. 231, ch. 135.

Art. 5154d. Picketing

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing," as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

* * *

Sec. 2. It shall be unlawful for any person, singly or in concert with others, by use of insulting, threatening or obscene language, to interfere with, hinder, obstruct, or intimidate, or seek to interfere with, hinder, obstruct, or intimidate, another in the exercise of his lawful right to work, or to enter upon the performance of any lawful vocation, or from freely entering or leaving any premises.

STATEMENT OF FACTS

pp. 186, 188-190

The fact proved here is (a) picket line was set up and a picket line is conceded both by stipulation as well as evidence that the signs carried spoke the truth; and there is nothing in any Statutes or laws that prevents a citizen of our country to advertise what the true facts

are. There was no violence and no claim of violence, and if there is any Statute that could be in any manner interpreted to prevent such picketing, then it runs afoul of the Constitution of the United States and the State of Texas.

• • •

Now, in addition to that we are talking here today about an injunction against peaceable picketing and the Supreme Court of Texas has very definitely and very clearly laid down the law in ex parte in every case by the Supreme Court of Texas, the Fourteenth Amendment and the First Amendment and Texas Constitution, Freedom of Speech Act so far as the fundamental law guaranteeing the right of citizens to do a given act. That act cannot be effectually condemned either by Statute or judicial decision.

We take the position and urge it at this time under the Constitution of the United States the fundamental right to peaceably publicize our differences and peaceably publicize this labor dispute since that is the fundamental law of this country. No statute can take from us that right to state the conditions and I am reading from the Supreme Court decision and it is right in line. That statement is right in line with the statement of every other Supreme Court decision.

I submit to Your Honor in view of those facts they are engaged in proprietary activities under the law of Texas; they have no right to any injunctive relief against our publicizing our differences. The right of freedom of speech is one of the most sacred rights given under the Constitution.

STATEMENT OF FACTS

p. 185-186

For the reason therefore, (a) the picketing that was carried on is a protective activity by the Constitution of the United States and that of the State of Texas and (b) because it is a protestive activity by Section 157, Title 29 of the U.S.C.A. or prohibited by Section 158 of Title 29, U.S.C.A. In either event this Court has no jurisdiction to determine this matter.

EXCERPT FROM APPLICATION FOR WRIT

Proposition No. 5

The Trial Court erred in its Conclusions of Law Number 16 in holding that the provisions of Article 5154(c) of the Texas Revised Civil Statutes as applied here are constitutional, under the Constitution of the United States of America and of the State of Texas.

EXCERPT FROM BRIEF

POINT TWO

(Germane to Points IX, XII and XIII in Petitioners' Motion for Rehearing in the Court of Civil Appeals)

The Court of Civil Appeals erred in holding that Article 5154(c) either by express language or by interpretation authorized the District Court to issue the injunction restraining Petitioners from peaceful picketing even though Petitioners' constitutional guarantees of the First, Tenth and Fourteenth Amendments to the Constitution of the United States, and Article 1, Section 8 of the Constitution of the State of Texas have been thereby denied.

* * *

EXCERPT FROM APPLICATION FOR WRIT

The Trial Court erred in its Conclusion of Law Number 12, that the employees of Appellee are not "employees" within the meaning of the National Labor Relations Act as amended.

The Trial Court erred in its Conclusion of Law Number 13 that the strike and or organized work stoppage engaged in by the employees of Appellee is neither protected nor prohibited under any of the provisions of the National Labor Relations Act as amended.

The Trial Court erred in its Conclusion of Law Number 14 that the establishment and maintenance of picket lines by the Appellants, South Atlantic & Gulf Coast District of the International Longshore-

men's Association, Independent, International Longshoremen's Association, Locals 872 and 1273, by their officers, representatives, servants and employees, is neither protected nor prohibited under any of the provisions of the National Labor Relations Act as amended.

EXCERPT FROM BRIEF

POINT THREE

(Germane to Points I, II, III, IX and X in Petitioners' Motion for Rehearing in the Court of Civil Appeals)

The Court of Civil Appeals erred in holding that this case, involving transportation in interstate and foreign commerce, was not arguably within the jurisdiction of the National Labor Relations Board.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 886

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL.,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 886

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Pursuant to Rule 40, paragraph 3, of the Rules of this Honorable Court, Respondent, Harris County-Houston Ship Channel Navigation District, adopts as correct the statement contained in the Petition with respect to **OPINIONS**

BELOW and the **APPENDICES**, with the exception of two (2) inaccuracies contained therein.

The Petition states that the "opinion of the Court of Civil Appeals for the First Supreme Judicial District, Houston, Texas, affirming the grant of the temporary injunction was rendered on September 20, 1962. . . ." (Petition, p. 2). This statement is in error in that the opinion was rendered on May 31, 1962, as is reflected in the opinion reported at 358 S.W. 2d 658.

The second inaccuracy appears initially at page 2 of the Petition when it is inferred that the opinion of the Court of Civil Appeals for the First Supreme Judicial District at Houston, Texas is correctly stated. The reported opinion of the Court below, as stated in the Petition (p. 2), appears at 358 S.W. 2d 658 and is copied into the **APPENDICES** to the Petition beginning at page 10a thereof. Instead of the designation "Appellee" at line 31 of page 12a, the designation should read "Appellant". As reflected in the reported opinion of the court below (358 S.W. 2d 658), that portion of the opinion reads:

> "Appellants assert that in no case do the State Courts of Texas have jurisdiction of a labor relations matter affecting interstate commerce, citing Ex parte Twedell, 158 Tex. 214, 309 S.W. 2d 834, and Ex parte Dilley, 160 Tex. 522, 334 S.W. 2d 425. We do not consider that the cases cited stand for the proposition urged." (Page 661)

JURISDICTION

While the Supreme Court of the United States has jurisdiction to review the decisions rendered by the court below [28 U.S.C.A. § 1257 (3)], Respondent respectfully submits that in the exercise of sound judicial discretion this Honorable Court will deny review since the decisions of the Court of Civil Appeals for the First Supreme Judicial District of Houston, Texas do not involve a federal substantive ques-

tion not heretofore decided by this Honorable Court, nor are such decisions by the court below discordant with the decisions of this Court.

QUESTIONS PRESENTED FOR REVIEW

1.

Whether or not Petitioners have any right which is arguably within the protection or prohibition of the Labor Management Relations Act, as amended, to engage in strikes and picketing against a governmental agency and a political subdivision of the State of Texas.

2.

Whether or not the right of a governmental agency and a political subdivision of the State of Texas to be free from strikes and picketing is abrogated by any right or privilege existing under either the Constitution or any law of the United States.

STATEMENT

Almost all of the material facts in this case were agreed upon by Stipulations, which were received in evidence by the Trial Court during the hearing on temporary injunction. These Stipulations are set forth in full in the Appendix.

Respondent is a governmental agency and a political subdivision of the State of Texas, existing under Article XVI, Section 59 of the Constitution and the laws of the State of Texas. (App. pp. 1a, 2a; S.F. 3, 4; Petition, p. 3).

During 1961, a Bulk Materials Handling Plant was constructed on Respondent's property in Harris County, Texas. (App., p. 3a). Prior to the operation of this new plant, Respondent assigned the various jobs in this new plant to workmen represented by International Longshoremen's

Union Local 1530 rather than to workmen represented by Locals 872 and 1273. (App., p. 3a). The stipulated facts refute Petitioners' contention that any workmen had "been put out of jobs" by Respondent. (Petition, p. 6).

In November, 1961 an International Longshoremen's Union, hereinafter referred to as "ILA", picketed Respondent and employees of Respondent engaged in a strike. Respondent filed a Charge against that Local Union with the Regional Director of the National Labor Relations Board, in Houston, Texas, charging that the picketing and strike caused by this Local Union was an unfair labor practice in violation of the Labor Management Relations Act, as amended. The Regional Director of the National Labor Relations Board dismissed the Charge against the Union on the ground that the Respondent was a political subdivision of the State of Texas and accordingly was not an "employer", nor were the persons working for it "employees", as those terms used in the Labor Management Relations Act, as amended. (S.F. 32-37). The dismissal of the Charge by said Regional Director was appealed by Respondent to the Office of the General Counsel of the National Labor Relations Board and Respondent was advised January 3, 1962 that for the reasons stated by said Regional Director, further proceedings were not warranted. (S.F. 39-40).

On or about January 5, 1962, representatives of Locals 872 and 1273 requested that certain work at the Respondent's new facility be performed by members of said Locals and other persons working through the hiring halls of these Local Unions. As Respondent refused, Locals 872 and 1273 caused two (2) pickets to be established at the intersection of the only road leading to the plant. (App., p. 3a). As a result of the establishment of the picketing conducted against Respondent, a total work stoppage occurred at the

Respondent's Bulk Materials Handling Plant. Thereafter Petitioners continued such demand upon Respondent, and continued their efforts to obtain such work. (S.F. 133-134). The Trial Court entered Findings of Fact and Conclusions of Law in support of its Orders granting Respondent a temporary and a permanent injunction against Petitioners.

Petitioners state (Petition, p. 4), "that the picketing was at all times lawful . . . and in compliance with the laws of Texas regulating picketing." This is a misstatement. Conclusion of Law No. 9 entered by the Trial Court in granting both the temporary and the permanent injunctions (Petition, pps. 8a and 25a) was that the picketing engaged in by Petitioners was *unlawful* under the laws of the State of Texas. The Court of Civil Appeals for the First Judicial District at Houston, Texas affirmed these holdings. (358 S.W. 2d 658 on temporary injunction; 360 S.W. 2d 181 on permanent injunction).

REASONS FOR REFUSING TO GRANT THE WRIT OF CERTIORARI

POINT ONE

THE HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT IS A GOVERNMENTAL AGENCY AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND IS NOT AN EMPLOYER WITHIN THE MEANING OF THE LABOR MANAGEMENT RELATIONS ACT, AS AMENDED.

A governmental agency and a political subdivision of a State are expressly excluded from the definition of the term "employer" in the Labor Management Relations Act, as amended. Employees of such bodies politic are not covered as "employees" within the meaning of said Act.

The Labor Management Relations Act, as amended, Section 2 (2), [29 U.S.C.A. § 152 (2)], states in part:

> "(2) The term 'employer' . . . shall not include . . . any state or political subdivision thereof."

Section 2 (3) of the Labor Management Relations Act, as amended, [29 U.S.C.A. § 152 (3)] states in part:

> "The term 'employee' shall include any employee . . . but shall not include any individual employed . . . by any . . . person who is not an employer as herein defined."

The critical issue with respect to the propriety of the court below enjoining the picketing and striking against Respondent is whether Respondent is a governmental agency and a political subdivision of the State of Texas. Respondent exists as a governmental agency and a body politic under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas. Respondent, Harris County-Houston Ship Channel Navigation District, was created and established by the 40th Texas Legislature, Acts 1927, 40th Leg., 1st C.S., p. 256, ch. 97. Petitioners conceded and stipulated that Respondent is a governmental agency and a political subdivision of the State of Texas. (Petition, p. 3; S.F. 3, 4; App., pps. 1a and 2a).

POINT TWO

THE NATIONAL LABOR RELATIONS BOARD HAS NO JURISDICTION OVER THIS RESPONDENT EMPLOYER, HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT.

The doctrine of Federal Preemption was most broadly stated by this Honorable Court in *San Diego Building Trades Council, Millmens' Local 2020 Building Material*

and Dump Drivers Local 36 v. *Garmon*, 359 U.S. 236, that when an activity is arguably protected by Section 7 of the Labor Management Relations Act, as amended, or is arguably prohibited by Section 8 of said Act, the State Courts, as well as the Federal Courts, must defer to the exclusive jurisdiction of the National Labor Relations Board.

The contention as urged by Petitioners that a State may not intervene in a labor dispute which is arguably protected or prohibited by the Labor Management Relations Act, as amended, is patently inapplicable to this case, as said Act does not regulate *governmental* employer-employee relations. Congress has consistently excluded governmental employer-employee relations from the Federal labor relations statutes.

The National Labor Relations Board has always given effect to the clear wording of Sections 2(2) and 2(3) of the Labor Management Relations Act, as amended. *Papermakers Importing Co., Inc.*, 116 N.L.R.B. 267 (1956); *New Bedford Steamship Authority*, 127 N.L.R.B. 1322 (1960). The National Labor Relations Board has continually refused, and not merely declined, Federal jurisdiction over employers similar to the Respondent herein. The National Labor Relations Board in *New Bedford Steamship Authority, supra*, held that:

> "Section 2(2) of our Act, in relevant part, and its predecessor in the Taft-Hartley and Wagner Acts, provides that 'The term "employer" . . . shall not include the United States , . . or any State or political subdivision thereof . . .' Since the appearance of this language and the orignial or Wagner Act, the Board has consistently held that it was deprived of jurisdiction over governmental employers, i.e., the United States or any State or political subdivision of a State."

Accord: *Mobile Steamship Association, et al*, 8 N.L.R.B. 1297 (1938).

The decisions of the court below are in accord with decisions of other state courts in cases dealing with governmental agencies. *International Longshoremen's Association* v. *Georgia Ports Authority*, 217 Ga. 212, 124 S.E. 2d 733 (1962) cert. den. 370 U.S. 922; *International Brotherhood* v. *Grand River Dam Authority*, 292 P. 2d 1018 (S. Ct., Okla., 1956); *City of Alcoa* v. *International Brotherhood of Electrical Workers*, 203 Tenn. 12, 308 S.W. 2d 476 (1957).

In the recent decision in *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*, the Supreme Court of the State of Georgia held that the Georgia Ports Authority, as an employer, was excluded from the provisions of the Labor Management Relations Act, as amended, as that port authority was a political subdivision of the State of Georgia. Counsel in that case urged before the Supreme Court of Georgia and this Honorable Court essentially the same propositions as are here being urged. In that case, as in this case, the ILA picketed a governmental port authority in an attempt to obtain employment for workmen represented by the ILA. The Georgia Supreme Court rejected the argument that the jurisdiction of the state court was preempted, holding that the term "employer" and the term "employee" as defined in the Labor Management Relations Act, as amended, excludes political subdivisions of a state and its employees, and affirmed the Trial Court's granting of injunctive relief to the governmental agency. The Petitioners request for Writ of Certiorari in that case was denied by this Honorable Court at 370 U.S. 922 (June 18, 1962).

POINT THREE

STRIKES AND PICKETING AGAINST A GOVERNMENTAL AGENCY AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS ARE AGAINST THE PUBLIC POLICY OF THE STATE OF TEXAS.

The Trial Court in Conclusions of Law Nos. 8 and 9 (Petition, pps. 8a and 25a) and the Court of Civil Appeals for the First Supreme Judicial District of Houston, Texas affirmed (358 S.W. 2d 658, 663; 360 S.W. 2d 181) that the strike and or organized work stoppage and the picketing were against the public policy of the State of Texas, as set forth in Article 5154c, Texas Revised Civil Statutes. This holding is in accord with the decisions reached by courts in other states. See, e.g., *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*, petition for writ of cert. denied, 370 U.S. 922 (June 18, 1962); *State* v. *Brotherhood of R. Trainmen*, 37 Cal. 2d 413, 232 P. 2d 857 (1951) cert. den. 342 U.S. 876; *Nutter* v. *City of Santa Monica*, 74 Cal. App. 2d 331, 168 P. 2d 741 (1946); *Port of Seattle* v. *Longshoreman's Union*, 324 P. 2d 1099 (S. Ct., Wash., 1958); *Norwalk Teachers' Asso.* v. *Board of Education*, 138 Conn. 269, 83 A. 2d 482 (1951).

POINT FOUR

THE DECISIONS BELOW DO NO CONFLICT WITH ANY DECISION OF THIS COURT, OR THE CONSTITUTION OR ANY LAW OF THE UNITED STATES.

Petitioners attack the constitutionality of Article 5154c, Texas Revised Civil Statutes. There are many cases in which this Honorable Court has held that limitations on the rights of governmental employees may be affected without any abridgement of constitutional rights. In *United Public Workers* v. *Mitchell*, 330 U.S. 75, this Court in holding that the Hatch Act, which prohibits governmental employees from engaging in certain types of political activities, was constitutional, stated:

> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolutes. * * * The essential rights of the First Amendment in some

> instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery." (Page 95.)

Petitioners herein assert that their rights of freedom of speech under the Constitution and laws of the United States were denied them by the injunctions issued by the Trial Court and the decisions of the court below. A state does not have to permit picketing for all purposes to be conducted. It is clear that the restrictions which have been imposed on Petitioners' right of free speech do not constitute an unconstitutional or unlawful abridgement of their freedom of speech.

This Honorable Court has repeatedly held that picketing for an unlawful object is not constitutionally privileged and may be banned by the States. Illustrative of unprotected conduct that State Courts have power to prevent are: sit-down strikes, *NLRB* v. *Fansteel Corporation*, 306 U.S. 240; mutinies, *Southern SS Company* v. *NLRB*, 316 U.S. 31; strikes and picketing accompanied by violence, *Allen Bradley Local 111* v. *WERB*, 315 U.S. 740; strikes in violation of contract, *NLRB* v. *Sands Manufacturing Company*, 306 U.S. 332; and picketing to secure more favorable terms of employment in violation of an agreement, *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138.

In *Hughes* v. *Superior Court*, 339 U.S. 460, this Court upheld the constitutionality of the State ban against picketing because of its unlawful purpose, stating:

> "[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states Palko v. Connecticut, 302 U.S. 319, 327, 82 L. ed. 288, 293, 58 S. Ct. 149, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a par-

> ticular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' * * * However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives grounds for its disallowance. . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." (Pages 464-465).

Accord: *Local Union No. 10* v. *Graham*, 345 U.S. 192; *Building Service Employers International Union, Local 262* v. *Gazzam*, 339 U.S. 532.

In *Norwalk Teachers' Assn.* v. *Board of Education*, *supra*, the Court stated:

> "Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle. It has been so regarded by the heads of the executive departments of the states and the nation."

Accord: *City of Alcoa* v. *International Brotherhood of Electrical Workers*, *supra*.

Courts of other states have upheld state statutes prohibiting strikes against governmental agencies where these constitutional questions were raised. In the *City of Detroit*

v. *Division 26 of Amalgamated Association*, 51 N.W. 2d 228 (1952), the Michigan Supreme Court held that a state statute which prohibited strikes against governmental agencies was constitutional as it did not violate the United States Constitution nor the State's Constitution, stating:

> ". . . it cannot be held, as defendants and cross-appellants contend, that by the Hutchinson Act the striking employees of Detroit's street railway system are subjected to a statute which violates the United States Constitution, art. 1 § 10, and the State Constitution, art. 2, § 9, prohibiting passage of bills of attainder; nor that they are deprived of rights without due process of law, United States Constitution, Fifth Amendment; State Constitution, art. 2, § 16; nor of equal protection of the laws, United States Constitution, Fourteenth Amendment; State Constitution, art. 2, § 1. * * * The Hutchinson Act cannot be held unconstitutional on any of the grounds just above noted."

The appeal to this Court from the decision of the Michigan Supreme Court was dismissed per curiam at 344 U.S. 805; rehearing was denied at 344 U.S. 882.

A similar constitutional contention, as is being made in this case, was asserted in *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*. The Union's Petition for Certiorari to this Honorable Court was denied in that case at 370 U.S. 922 (June 18, 1962).

CONCLUSION

Respondent respectfully submits that this Petition shows no basis upon which the Writ of Certiorari should be granted. Respondent further submits that the decisions rendered below are not discordant with previous decisions of this Court and do not involve a federal substantive question not heretofore decided by this Honorable Court. For

the reasons stated herein, Respondent respectfully requests that the Writ of Certiorari be denied.

Respectfully submitted,

L. G. Clinton, Jr.

L. G. Clinton, Jr.

Thomas R. McDade

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Bank of the Southwest Building
Houston 2, Texas

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P. O. Box 2562
Houston 1, Texas

Attorneys for Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 28 day of March, 1963, a true and correct copy of the foregoing was served upon Messrs. Arthur J. Mandell and Sewell Myer, Attorneys for Petitioners, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, et al, by personally delivering and serving the same on the said Messrs. Arthur J. Mandell who maintains his offices in the South Coast Building, Houston, Texas, and Sewell Myer, who maintains his offices in the First City National Bank Building, Houston, Texas.

L. G. Clinton, Jr.
L. G. Clinton, Jr.

APPENDIX

No. 585,712

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, *Plaintiff*, v. SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL. *Defendants*.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

STIPULATIONS

It is hereby stipulated by and between HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, Plaintiff, and SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT (hereinafter referred to as District), RALPH A. MASSEY, as a representaive of said District, PAUL F. KOEHNE, as a representative of said District, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 872, RAYMOND DUNCAN, as a representative of said Local 872, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1273, WILLIE C. WELLS and JIM CLARK, as representatives of said Local 1273, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1530, LLOYD ALLEN, as a representative of said Local 1530, Defendants, that the following facts may be taken as true, solely for the purpose of this litigation.

I.

Harris County-Houston Ship Channel Navigation District is a governmental agency of the State of Texas, and is a political subdivision thereof, the same existing under Article XVI, Sections 52 and 59 of the Constitution and laws of the State of Texas, and is domiciled in Harris County, Texas.

Defendant South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, is a labor organization within the meaning of the law of the State of Texas which represents employees in Houston, Harris County, Texas, and said District has an office and place of business in Galveston, Galveston County, Texas. Defendant Ralph A. Massey is an officer and a representative of said District, and said Defendant resides in Houston, Harris County, Texas. Defendant Paul F. Koehne is an officer and a representative of said District and resides in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 872, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 872 has its principal place of business in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 1273, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 1273 has its principal place of business in Houston, Harris County, Texas. The Defendants Willie C. Wells and Jim Clark are officers and representatives of said Local 1273 and both reside in Houston, Harris County, Texas. The Defendant International Longshoremen's Association, Local 1530, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 1530 has its principal place of business in Houston, Harris County, Texas. Defendant Lloyd Allen is an Officer and a representative of said Local 1530 and resides in Houston, Harris County, Texas.

II.

Plaintiff is a governmental agency of the State of Texas, and is a political subdivision thereof, and owns and operates large and extensive wharves, warehouse facilities, grain elevators, bulk materials, handling facilities, which are operated in competition with private industry in the Port of Houston. At Plaintiff's wharves it receives and

delivers various types of cargo to and from ships; in its warehouses it handles, receives, stores, preserves and delivers various types of goods, wares, merchandise and commodities; in connection with the operations of its grain elevator, it receives, stores and ultimately discharges grains for domestic and foreign shipment; and, in connection with its bulk materials handling facilities, it receives and discharges dry bulk materials moving through the Port of Houston into and outside of the United States of America.

III.

Plaintiffs and Defendants agree that during 1961 a bulk materials handling plant was constructed at a cost of approximately $4,000,000.00 on Plaintiff's property in Harris County located adjacent to the Houston Ship Channel at Greens Bayou. The funds expended in connection with the construction of said plant were raised by the sale of bonds repayable from the revenue to be derived from said plant and the other facilities of Plaintiff.

IV.

Plaintiff began its operations of the Bulk Materials Handling Plant on or about September 21, 1961. Prior to the beginning of such operations, Plaintiff assigned its employees to various jobs in said plant.

V.

On or about January 5, 1962, representatives of said District and representatives of said Locals 872 and 1273 requested that certain work at the Bulk Materials Handling Plant be performed by members of said Locals 872 and 1273 and other persons working through the hiring halls of these Local Unions. As Plaintiff refused, Defendant Locals 872 and 1273 at approximately 7:30 a.m. on January 6, 1962, caused two (2) pickets to be established at the intersection of Penn City Road and the only road leading into said

Bulk Materials Handling Plant. One of said pickets carried a sign which read as follows:

Labor Dispute
with
ILA Local No. 1273
Longshoremen

The other said picket carried a sign which read as follows:

Harris County Houston Ship Channel
Navigation District
Gulf Has A-Stevedores
Labor Dispute
with
ILA Local No. 872
Longshoremen

At the time of the establishment of said picket lines, a ship RAMON de LARRINAGA was moored at Plaintiff's Bulk Materials Handling Plant awaiting to be unloaded. The cargo of said ship consisted of approximately 5,000 tons of zinc concentrate and the same was to be unloaded into railroad cars by the use of Plaintiff's facilities. When Plaintiff's employees who were scheduled to work at said plant arrived at approximately 8 A.M. on January 6, 1962, each of them refused to cross the picket lines. As a result, Plaintiff was unable to begin unloading the cargo of said ship. At approximately 3 p.m. on January 6, 1962, said picket lines were taken down long enough to permit certain members of Local 1273 to enter Plaintiff's premises and go aboard said vessel and to be available for work as required by Court Order entered in another proceeding, but immediately thereafter, said picket lines were re-established and Plaintiff's employees continued their refusal to cross the picket lines.

VI.

Officers and representatives of said District and said Locals 1273 and 872 have requested and continue to request that certain of the work at the Bulk Materials Handling Plant be performed by members of said Locals 1273 and 872, and by other persons working through the hiring-halls of these Local Unions.

This stipulation shall be without prejudice to the right of any party to introduce additional evidence of any kind.

DATED at Houston, Texas, this the 16th day of January, 1962.

APPROVED AND AGREED TO:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By: s L. G. CLINTON, JR.
s PAUL R. ROBERTSON

Attorneys for Plaintiff

SEWALL MYER
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South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent and International Longshoremen's Association, Local 1273

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DIXIE & SCHUPMAN
By: s MARION C. LADWIG

Attorneys for Defendant,
International Longshoremen's Association, Local 1530

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No. 886

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL.,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

BRIEF OF THE STATE OF TEXAS, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WAGGONER CARR
Attorney General of Texas

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Assistant Attorney General

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BRIEF OF THE STATE OF TEXAS, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT

This brief is filed by the State of Texas in accordance with Rule 42 of this Honorable Court.

The purpose of the brief is to urge that the laws and public policy of the State of Texas which prohibit strikes by public employees do not abridge the right of freedom of speech secured to Petitioners by the First and Fourteenth Amendments to the Constitution of the United States; and that the courts of the State of Texas may lawfully regulate strikes by public employees.

THE INTEREST OF THE STATE

The State of Texas has laws which are designed to insure to all Texas citizens continuous, uninterrupted governmental services. This matter of the public interest is insured to all Texas citizens by the laws of this State which prohibit public employees from engaging in strikes against their governmental employer (App. A, pp. 1a-2a). The attack being made on these laws in this case directly challenges the rights of all citizens of the State of Texas.

Respondent is a governmental agency and a political subdivision of the State of Texas existing under Article XVI, Section 59, of the Constitution and the laws of the State of Texas (App. B, pp. 2b, 3b).

The interest of Texas in presenting its argument in support of the constitutionality of its laws banning strikes by public employees as a means of protecting all of the citizens of the State of Texas and the public interest, is equal to the interest of Respondent in this case in presenting like argument.

ARGUMENT

I.

THE DECISIONS BELOW DO NOT CONFLICT WITH ANY DECISION OF THIS COURT, OR WITH THE CONSTITUTION OR ANY LAW OF THE UNITED STATES.

Petitioners stipulated during the trial of this cause that Respondent is a governmental agency and political subdivision of the State of Texas (App. B, pp. 2b, 3b). Petitioners further stipulated during the trial that the employees of the Respondent refused to perform

work scheduled to be performed by them by Respondent (App. B, p. 5b).

Article 5154c of the Texas Revised Civil Statutes (App. A, 1a-2a) declares, in part, that it is against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppage against the State of Texas or any political subdivision thereof.

Petitioners herein strenuously contend that their rights of freedom of speech guaranteed under the Constitution and the laws of the United States were denied them by the issuance of injunctions by the Trial Court and decisions of the Court below. Contrary to the contentions voiced by Petitioners, the authorities of this Honorable Court established with abundant clarity that the Petitioners' right of free speech has not been unconstitutionally or unlawfully abridged by the injunctions issued below.

Petitioners attack the constitutionality of Article 5154c. The decisions of this Honorable Court abundantly demonstrate that such an attack is without merit.

This Honorable Court has held in a number of cases that limitations on the rights of governmental employees may be affected without any abridgement of constitutional rights. For example, in *United Public Workers v. Mitchell*, 330 U.S. 75, this Honorable Court held that the Hatch Act, which prohibits governmental employees from engaging in certain types of political activities, was constitutional. In upholding the constitutionality of the Hatch Act, the Court stated:

> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolute. The requirements of residence and age must

be met. The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery." (Page 95.)

Likewise, the decisions of this Honorable Court unequivocally establish that a state does not have to permit picketing for all purposes to be conducted. This Honorable Court has repeatedly held that picketing for an unlawful object is not constitutionally privileged and may be banned by the States. Illustrative of unprotected conduct that State Courts have power to prevent are: sitdown strikes, *NLRB v. Fansteel Corporation*, 306 U.S. 240; mutinies, *Southern SS Company v. NLRB*, 316 U.S. 31; strikes and picketing accompanied by violence, *Allen-Bradley Local 1111 v. WERB*, 315 U.S. 740; strikes in violation of contract, *NLRB v. Sands Manufacturing Company*, 306 U.S. 332; and picketing to secure more favorable terms of employment in violation of an agreement, *Benz v. Compania Naviera Hidalgo*, 353 U.S. 138.

In *Hughes v. Superior Court*, 339 U.S. 460, this Court upheld the constitutionality of the State law against picketing because of its unlawful purpose, stating:

"The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states Palko v. Connecticut, 302 U.S. 319, 327, 82 L. ed. 288, 293, 58 S. Ct. 149, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite ir-

respective of the nature of the ideas which are being dissiminated.' * * * However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives grounds for its disallowance. . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." (Pages 464-465.)

Accord: *Local Union No. 10 v. Graham*, 345 U.S. 192; *Building Service Employers International Union, Local 262 v. Gazzam*, 339 U.S. 532.

This Honorable Court in *International Brotherhood of Teamsters, etc. v. Vogt*, 354 U.S. 284, after reviewing numerous decisions involving picketing and wherein contentions that deprivation of constitutional privilege had been asserted, stated:

"This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at *preventing effectuation of that policy.*" (Page 293.) (Emphasis supplied.)

Rehearing in the *Vogt* case was denied at 354 U.S. 945.

In *Local Union No. 10 v. Graham, supra*, this Honorable Court further elaborated on the right of the State to enjoin peaceful picketing, thusly:

"The basic question here is whether the Commonwealth of Virginia, consistently with the Constitution of the United States, may enjoin peaceful

> picketing where it is carried on for purposes in conflict with the Virginia Right to Work Statute. A question also before us is whether the record in this cause justifies the findings, made below, that picketing was for such purposes. We answer each in the affirmative." (Page 193.)

State courts have universally upheld the constitutionality of state statutes prohibiting strikes against governmental agencies. For example, in the *City of Detroit v. Division 26 of Amalgamated Association*, 51 N.E. 2d 228, the Michigan Supreme Court held that a state statute which prohibited strikes against governmental agencies was constitutional as it did not violate the United States Constitution nor the State's Constitution. The Court held:

> ". . . It cannot be held, as defendants and cross-appellant contend, that by the Hutcheson Act the striking employees of Detroit Street Railway System are subjected to a statute which violates the United States Constitution, Article I, Section 10 of the State Constitution, Article II, Section 9, prohibiting passage of bills of attainder; nor are they deprived of rights without due process of law, United States Constitution, Fifth Amendment; the State Constitution, Article II, Section 16; nor the equal protection of the laws, United States Constitution, Fourteenth Amendment; State Constitution, Article II, Section 1 * * * The Hutcheson Acts cannot be held unconstitutional on any of the grounds just above noted." (Page 235.)

The Union's appeal to this Honorable Court from the decision of the Michigan Supreme Court was dismissed per curiam in 344 U.S. 805 on the grounds that no constitutional question was raised and rehearing was denied by the Court in 344 U.S. 882.

Accord: *City of Los Angeles v. Los Angeles Building*

and Construction Trades Council, 210 P. 2d 305; *Port of Seattle v. International Longshoremen's & Warehousemen's Union*, 52 Wash. 2d 317, 324 P. 2d 1099.

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> "Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle. It has been so regarded by the heads of the executive departments of the states and the nation.
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> * * *
>
> "In the American system, sovereignty is inherent in the people. They can delegate it to a government which they create and operate by law. They can give to that government the power and authority to perform certain duties and furnish certain services. The government so created and empowered must employ people to carry on its task. Those people are agents of the government. They exercise some part of the sovereignty entrusted to it. They occupy a status entirely different from those who carry on a private enterprise. They serve the public welfare and not a private purpose. To say that they can strike is the equivalent of saying that they can deny the authority of government and contravene the public welfare. The answer to question (c) is 'No'." (Pages 484, 485.)

Finally, the constitutional contention regarding infringement on the right of freedom of speech, as the one being made in this case, was presented by the Union

in *International Longshoremen's Association v. Georgia Ports Authority,* 217 Ga. 212, 124 S.E. 2d 733 (1962). In that case, as in the instant case, the Union picketed a governmental port authority to force the governmental agency to accede to the demands that persons being represented by the Union be given employment. The Georgia Supreme Court affirmed the Trial Court's injunction enjoining a strike by the employees of the governmental port authority and the picketing by the Union. The Union's Petition for Certiorari to this Honorable Court was denied in that case at 370 U.S. 922 on June 18, 1962.

II.

THE NATIONAL LABOR RELATIONS BOARD HAS NO JURISDICTION OVER THE RESPONDENT EMPLOYER, HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, IN THIS CASE, AS RESPONDENT IS A GOVERNMENTAL AGENCY AND POLITICAL SUBDIVISION OF THE STATE OF TEXAS.

Petitioners contend that the Court below erroneously intervened to enjoin and restrain their conduct in the instant case on the grounds that the labor dispute involved is either arguably protected or prohibited by the provisions of the National Labor Relations Act, as amended.

The doctrine of Federal Preemption was most broadly stated by the United States Supreme Court in *San Diego Building Trades Council, Millmen's Union Local 2020 Building Material and Dump Drivers Local 36 v. Garmon,* 359 U.S. 226, that when an activity is arguably protected by Section 7 of the National Labor Relations Act, or is arguably prohibited by Section 8

of the National Labor Relations Act, the State Courts, as well as the Federal Courts, must defer to the exclusive competence of the National Labor Relations Board. Other cases in general accord: *Garner v. Teamsters*, 356 U.S. 485; *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468; *Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U.S. 20; *San Diego Building Trades Council v. Garmon*, 353 U.S. 26.

The National Labor Relations Act, as amended, however, does not purport to regulate *governmental or public* employer-employee relations, and accordingly the contention that the labor dispute involved in the instant case is either arguably protected or prohibited under the provisions of the National Labor Relations Act, as amended, is patently inapplicable.

The National Labor Relations Act, as amended, Section 2(2), provides, in part, as follows:

> "The term 'employer' . . . shall not include . . . any state or political subdivision thereof. 29 U.S.C.A. Sec. 152(2).

Section 2(3) of the Act states in part as follows:

> "The term 'employer' . . . shall not include any individual employed . . . by any . . . person who is not an employer as herein defined." 29 U.S.C.A. Sec. 152(3).

The National Labor Relations Board has given effect to the unambigious exclusionary wording of Sections (2) and (3): *Papermakers Importing Co., Inc.*, 116 N.L.R.B. 267; *New Bedford Steamship Authority*, 127 N.L.R.B. 1322. The National Labor Relations Board has consistently refused, and not merely declined, Federal jurisdiction over employers similar to the Respondent herein. The National Labor Relations Board

in *New Bedford Steamship Authority, supra,* held that:

> "Section 2(2) of our Act, in relevant part, and its predecessor in the Taft-Hartley and Wagner Acts, provides that 'The term "employer" . . . shall not include the United States . . . or any State or political subdivision thereof . . . .' Since the appearance of this language and the original or Wagner Act, the Board has consistently held that it was deprived of jurisdiction over governmental employers, i.e., the United States or any State or political subdivision of a State."

Accord: *Mobile Steamship Association, et al.,* 5 N.L.R.B. 1297 (1938).

Several decisions of other state courts are in accord with the decision of the Court below in cases dealing with governmental agencies. *International Longshoremen's Association v. Georgia Ports Authority, supra; International Brotherhood v. Grand River Dam Authority,* 292 P. 2d 1018 (Okla. 1956); *City of Alcoa v. International Brotherhood of Electrical Workers,* 203 Tenn. 12, 308 S.W. 2d 476 (1957).

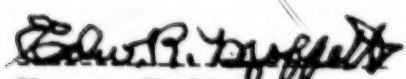
In the recent decision in *International Longshoremen's Association v. Georgia Ports Authority, supra,* essentially the same propositions were presented as are now being urged by Petitioners in this case. The Georgia Supreme Court rejected the contention that the jurisdiction of the state court was preempted, and instead held that the term "employer" and the term "employee" as defined in the National Labor Relations Act, as amended, excludes political subdivisions of a state and its employees, and affirmed the Trial Court's injunction issued to the governmental port authority. The Union's request for Writ of Certiorari was denied by this Honorable Court in that case at 370 U.S. 922 on June 18, 1962.

CONCLUSION

The State of Texas respectfully submits that this request shows no basis upon which the Writ of Certiorari should be granted. The State of Texas further submits that it has shown this Honorable Court that the decisions rendered below was in strict accordance with previous decisions of this Court and adjudicated no new federal question of substance. For these reasons, the State of Texas respectfully requests that the Writ of Certiorari be denied.

WAGGONER CARR
Attorney General of Texas

PAUL R. ROBERTSON
Assistant Attorney General



EDWARD R. MOFFETT
Assistant Attorney General

Capitol Station

Austin 11, Texas

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of April, 1963, a copy of the foregoing Brief of The State of Texas, Amicus Curiae, in Opposition to Petition for Writ of Certiorari, was served on Counsel for Petitioners, Arthur J. Mandell, Esq., 707 South Coast Building, Houston 2, Texas, and Sewell Myer, Esq., 1410 First City National Bank Building, Houston 2, Texas, by depositing a true and correct copy thereof in the United States mails, postage prepaid, addressed to said attorsaid addresses.

Edward R. Moffett

EDWARD R. MOFFETT
Assistant Attorney General

APPENDIX A

ARTICLE 5154c OF THE TEXAS REVISED CIVIL STATUTES

"Section 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

"Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

"Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

"Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

"Sec. 5. The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or condition of work.

"Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

"Sec. 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved. Acts 1947, 50th Leg., p. 231, ch. 135."

APPENDIX B

No. 585,712

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, *Plaintiff*, v. SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, ET AL., *Defendants*.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

STIPULATIONS

It is hereby stipulated by and between Harris County-Houston Ship Channel Navigation District, Plaintiff, and South Atlantic & Gulf Coast District of The International Longshoremen's Association, Independent (hereinafter referred to as District), Ralph A. Massey, as a representative of said District, Paul F. Koehne, as a representative of said District, International Longshoremen's Association, Local 872, Raymond Duncan, as a representative of said Local 872, International Longshoremen's Association, Local 1273, Willie C. Wells and Jim Clark, as representatives of said Local 1273, International Longshoremen's Association, Local 1530, Lloyd Allen, as a representative of said Local 1530, Defendants, that the following facts may be taken as true, solely for the purpose of this litigation.

I.

Harris County-Houston Ship Channel Navigation District is a governmental agency of the State of Texas, and is a political subdivision thereof, the same existing under Article XVI, Sections 52 and 59 of the Constitution and laws of the State of Texas, and is domiciled in Harris County, Texas.

Defendant South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, is a labor organization within the meaning of the law of the State of Texas which represents employees in Houston, Harris County, Texas, and said District has an office and place of business in Galveston, Galveston County, Texas, Defendant Ralph A. Massey is an officer and a representative of said District, and said Defendant resides in Houston, Harris County, Texas. Defendant Paul F. Koehne is an officer and a representative of said District and resides in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 872, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 872 has its principal place of business in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 1273, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 1273 has its principal place of business in Houston, Harris County, Texas. The Defendants Willie C. Wells and Jim Clark are officers and representatives of said Local 1273 and both reside in Houston, Harris County, Texas. The Defendant International Longshoremen's Association, Local 1530, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said

District and said Local 1530 has its principal place of business in Houston, Harris County, Texas. Defendant Lloyd Allen is an officer and a representative of said Local 1530 and resides in Houston, Harris County, Texas.

II.

Plaintiff is a governmental agency of the State of Texas, and is a political subdivision thereof, and owns and operates large and extensive wharves, warehouse facilities, grain elevators, bulk materials, handling facilities, which are operated in competition with private industry in the Port of Houston. At Plaintiff's wharves it receives and delivers various types of cargo to and from ships; in its warehouses it handles, receives, stores, preserves and delivers various types of goods, wares, merchandise and commodities; in connection with the operations of its grain elevator, it receives, stores and ultimately discharges grains for domestic and foreign shipment; and, in connection with its bulk handling facilities, it receives and discharges dry bulk materials moving through the Port of Houston into and outside of the United States of America.

III.

Plaintiffs and Defendants agree that during 1961 a bulk materials handling plant was constructed at a cost of approximately $4,000,000.00 on Plaintiff's property in Harris County located adjacent to the Houston Ship Channel at Green Bayou. The funds expended in connection with the construction of said plant were raised by the sale of bonds repayable from the revenue to be derived from said plant and the other facilities of Plaintiff.

IV.

Plaintiff began its operations of the Bulk Materials Handling Plant on or about September 21, 1961. Prior to the beginning of such operations, Plaintiff assigned its employees to various jobs in said plant.

V.

On or about January 5, 1962, representatives of said District and representatives of said Locals 872 and 1273 requested that certain work at the Bulk Materials Handling Plant be performed by members of said Locals 872 and 1273 and other persons working through the hiring halls of these Local Unions. As Plaintiff refused, Defendant Locals 872 and 1273 at approximately 7:30 a.m. on January 6, 1962, caused two (2) pickets to be established at the intersection of Penn City Road and the only road leading into said Bulk Materials Handling Plant. One of said pickets carried a sign which read as follows:

Labor Dispute
with
ILA Local No. 1273
Longshoremen

The other said picket carried a sign which read as follows:

Harris County Houston Ship Channel
Navigation District
Gulf Has A Stevedores
Labor Dispute
with
ILA Local No. 872
Longshoremen

At the time of the establishment of said picket lines, a ship RAMON de LARRINAGA was moored at Plaintiff's Bulk Materials Handling Plant awaiting to be unloaded. The cargo of said ship consisted of approximately 5,000 tons of zinc concentrate and the same was to be unloaded into railroad cars by the use of Plaintiff's facilities. When Plaintiff's employees who were scheduled to work at said plant arrived at approximately 8 A.M. on January 6, 1962, each of them refused to cross the picket lines. As a result, Plaintiff was unable to begin unloading the cargo of said ship. At approximately 3 P.M. on January 6, 1962, said picket lines were taken down long enough to permit certain members of Local 1273 to enter Plaintiff's premises and go aboard said vessel and to be available for work as required by Court Order entered in another proceeding, but immediately thereafter, said picket lines were re-established and Plaintiff's employees continued their refusal to cross the picket lines.

VI.

Officers and representatives of said District and said Locals 1273 and 872 have requested and continue to request that certain of the work at the Bulk Materials Handling Plant be performed by members of said Locals 1273 and 872, and by other persons working through the hiring halls of these Local Unions.

This stipulation shall be without prejudice to the right of any party to introduce additional evidence of any kind.

Dated at Houston, Texas, this the 16th day of January, 1962.

Approved And Agreed To:

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/s/ PAUL R. ROBERTSON
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